

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO
3 UNITED STATES OF AMERICA,
4 Plaintiff,
5 vs. NO: CR-15-4268 JB
6 ANGEL DELEON, et al.,
7 Defendants.

8
9 Transcript of excerpt of testimony of
10 JERRY MONTOYA
11 Monday, February 12, 2018
12 Tuesday, February 13, 2018
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SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 843-9492



MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

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1 THE COURT: All right. Mr. Beck, does the
2 Government have its next witness or evidence?

3 MR. BECK: Yes, Your Honor. The United
4 States calls Jerry Montoya.

5 THE COURT: Mr. Montoya, if you'll come up
6 and stand next to the witness box right in front of
7 you. Before you're seated, Ms. Standridge, my
8 courtroom deputy, will swear you in. So raise your
9 right hand to the best of your ability there.

10 JERRY MONTOYA,
11 after having been first duly sworn under oath,
12 was questioned, and testified as follows:

13 THE CLERK: Please be seated. State and
14 spell your name for the record.

15 THE WITNESS: Yes, ma'am. Jerry Montoya.
16 J-E-R-R-Y, M-O-N-T-O-Y-A.

17 THE COURT: Mr. Montoya, Mr. Beck.

18 DIRECT EXAMINATION

19 BY MR. BECK:

20 Q. Mr. Montoya, are you now or have you ever
21 been a member of the Sindicato de Nuevo Mexico?

22 A. I'm an ex-member, yes.

23 Q. When were you brought into the SNM?

24 A. Roughly 2000.

25 Q. Where was that?

1 A. Albuquerque, New Mexico, BCDC, which is
2 the county jail.

3 Q. Is that the Bernalillo County Detention
4 Center?

5 A. Yes, sir.

6 Q. And who brought you in to the SNM?

7 A. Roy Martinez.

8 Q. Anyone else?

9 A. Yes, I had some people vouch for me. One
10 of my cousins; his name is Raymond Lujan. Another
11 primo of mine is Sammy Chavez. And some friends
12 from my neighborhood, Armando Gandala; he vouched,
13 as well. And Banjo Gallegos vouched for me to be a
14 member.

15 Q. Now Mr. Montoya, it's a little hard to
16 hear you, so maybe either move a little closer to
17 the mic or just speak up a little bit when you
18 speak, please.

19 A. All right.

20 Q. Did you put in work to join the SNM?

21 A. Excuse me?

22 Q. Did you put in work to join the SNM?

23 A. Yes, sir.

24 Q. What did you do?

25 A. I assaulted two people in the county jail

1 to show that -- you know, my willingness to put in
2 work for the SNM.

3 Q. And why did you assault those two people?

4 A. Just to show loyalty to the gang.

5 Q. Did someone instruct you to assault those
6 people?

7 A. Yes.

8 Q. Who was that?

9 A. The first time I had did it, it came from
10 Gerald Archuleta and Roy Martinez.

11 Q. And the second time?

12 A. I did it on my own.

13 Q. And why did these people get assaulted?

14 A. They were rival gangs.

15 Q. What gangs?

16 A. Los Carnales, one of them, and the other
17 was a Sureno gang.

18 Q. Before you joined the SNM, were you a
19 member of any street gang?

20 A. Yes, I was. I was a member of San Jose
21 Street Gang.

22 Q. A member of what?

23 A. The San Jose Street Gang.

24 Q. And where is that?

25 A. It's in Albuquerque, New Mexico.

1 Q. And when you came to prison, why did you
2 decide -- or how did you know to join the SNM?

3 A. My cousins were already in the SNM Gang,
4 and they're from my neighborhood street gang, so
5 that's why I gravitated towards the SNM prison gang.

6 Q. In 2000, when you joined the SNM, why were
7 you in prison?

8 A. I had committed a murder.

9 Q. And what did you do?

10 A. Shot somebody.

11 Q. And did that give you any special -- why
12 did the SNM recruit you after having a murder?

13 A. I guess they seen the willingness that I
14 was able to kill someone. So I guess they seen
15 potential in me to do so, so they recruited me.

16 Q. I'm going to show you a couple photos.
17 I'm going to show you what's already been admitted
18 as Exhibit 596. Who is that?

19 A. That's me.

20 Q. I'm going to show you Exhibit 598. What's
21 depicted in that photograph?

22 A. My street gang. It says San Jo.

23 Q. And Exhibit 600. What is that a picture
24 of?

25 A. That's another tattoo on my forearm. It

1 says "east," and the other side would say "side."
2 It would say East Side.

3 Q. I'm going to show you Exhibit 601.

4 A. It says "side" on there.

5 Q. You have East Side on your arms?

6 A. I have East Side on my forearms, yes, sir.

7 Q. And why?

8 A. That's the side that I grew up on from my
9 street gang, East Side San Jo.

10 Q. So are there two -- I guess I'm going to
11 call them chapters of San Jose?

12 A. It's not chapters. It's more of two
13 sides. There is a south side, and then there is an
14 east side. And I grew up on the east side of San
15 Jose. So that's why I got the tattoo, to identify
16 that, I guess.

17 Q. So do your tattoos identify which gangs
18 you're a member of?

19 A. Absolutely, yes.

20 THE COURT: Mr. Beck, when you said 598
21 you didn't have a letter to it. You just said 598?

22 MR. BECK: That's right, Your Honor.

23 BY MR. BECK:

24 Q. I'm going to show you what's been admitted
25 as Government's Exhibit 604. What is that a

1 photograph of?

2 A. That's a photograph of my SNM tattoo.

3 Q. And what does that tattoo show or
4 memorialize?

5 A. It just identifies me to others that I'm
6 an SNM, at that time an SNM Gang member.

7 Q. When you joined the SNM in 2001, who were
8 the leaders?

9 A. I remember them to be Angel Munoz, Gerald
10 Archuleta, at that time.

11 Q. Does Gerald Archuleta have another name
12 that he goes by?

13 A. Yes, he does.

14 Q. What's that?

15 A. They call him Styx.

16 Q. Does the SNM have certain rules?

17 A. Yes.

18 Q. What are the rules of the SNM?

19 A. For one, no snitching, no ratting. You
20 have to be willing to put in work, put in violence
21 for the group.

22 Q. Are there other rules about when you're
23 recruited? Do you have to do something with your
24 paperwork?

25 A. Produce it, produce your J&S, your plea

1 bargain to whoever is there with you, to let them
2 know that -- why you're there in prison; that you're
3 there for a valid reason, not like a sex offense
4 crime; just how much time you've got, stuff like
5 that.

6 Q. And did your paperwork, when you became a
7 member or were recruited in 2000, 2001, show your
8 murder conviction?

9 A. Yes, it did.

10 Q. At some point after you joined, did you
11 see a list of rules actually on paper?

12 A. Yes, I did.

13 Q. And where did you see this?

14 A. About 2010, I seen these documents in
15 Southern New Mexico Correctional Facility.

16 Q. Is that here in Las Cruces?

17 A. Yes, sir.

18 Q. And who showed you that list?

19 A. Another friend of mine that's an SNM Gang
20 member. He goes by the name of Silly. His name is
21 Chris Trujillo.

22 Q. Was that list called a code of conduct?

23 A. Yes.

24 Q. I want to talk to you about some of your
25 SNM-related crimes. At some point did you assault

1 someone named Nestor Caraveo?

2 A. Yes, I did.

3 Q. What happened?

4 A. I seen him in the jails in a place called
5 R&D. I know he was from a rival gang, so I
6 assaulted him.

7 Q. Did anyone from SNM tell you to assault
8 Nestor Caraveo?

9 A. No, but it's a rule if you cross paths
10 with the rival gang, you know. If you don't do
11 nothing, they'll get back. So you have to assault
12 that person.

13 Q. And in 2006, did you engage in criminal
14 activity related to the SNM?

15 A. Pertaining to?

16 Q. Conspiracy to bring in drugs into a
17 facility?

18 A. Oh, yes, sir, I did.

19 Q. What happened there?

20 A. I had got together with another SNM Gang
21 member, and we conspired to bring in drugs into the
22 facility. That's it.

23 Q. Who is that gang member?

24 A. Arturo Garcia.

25 Q. And how were you planning on bringing

1 drugs into the facility?

2 A. He and I talked about it, and he asked me
3 if I could get the drugs from his girlfriend. I got
4 them and bring them in through the mail system.
5 Like that.

6 Q. And have you personally ever brought in
7 drugs into a prison facility?

8 A. Yes.

9 Q. Did you do that for the SNM?

10 A. For -- yes.

11 Q. And how is that? Why is it for the SNM?

12 A. Well, I shared my drugs that I had got
13 with the SNM.

14 Q. How did you bring in those drugs?

15 A. I smuggled them in.

16 Q. How did you do that?

17 A. Through my girlfriend.

18 Q. And is there some rule in the SNM about
19 what you do with your drugs when you bring them into
20 a facility with other SNM members?

21 A. Well, if you get drugs, you know, you
22 share them with whoever is there with you, you know.
23 You just give them some. Sell some, but it's always
24 to give them a little bit of drugs.

25 Q. And outside of bringing in drugs in 2006,

1 Mr. Caraveo, and assaulting the other LC member --
2 the other gang members early on, have you done any
3 crimes before the Molina murder for SNM?

4 A. Not that I can remember, sir.

5 Q. Why is that?

6 A. Never came up. Never came up.

7 Q. Have you done Suboxone in prison?

8 A. I have.

9 Q. Do you sell Suboxone in prison or have you
10 in the past?

11 A. Yes, I have.

12 Q. And before the Molina murder at Southern
13 New Mexico Correctional Facility, did you sell
14 drugs?

15 A. Yes.

16 Q. And tell us about that.

17 A. You mean when I was in prison?

18 Q. When you thought you were getting out, and
19 you sold drugs, why did you do that, and what were
20 you doing?

21 A. I was on my way out, to get out of prison,
22 and I was just going to get the drugs and sell them;
23 that way, I had money to get out to.

24 Q. How much money did you have when you
25 thought you were going to get out?

1 A. Close to \$5,000.

2 Q. What were you going to do with that money?

3 A. Just going to buy me a vehicle, buy me
4 clothes, and like that.

5 Q. And where did you get those drugs that you
6 were selling to raise the \$5,000?

7 A. Other SNM Gang members would help me out
8 with the drugs. I would get them and I would sell
9 them, or I would purchase something from them, and
10 just turn it over and sell it for more.

11 Q. When you've done Suboxone, what effect did
12 it have on you?

13 A. The effect it had on me is just like
14 drinking beer. That's it. Just like drinking a few
15 beers, getting a buzz, and enjoying it for the rest
16 of the day. It lasts all day, so, you know...

17 Q. So in your opinion, it had the effect on
18 you of something like getting drunk? Is that what
19 you're saying?

20 A. Yes.

21 Q. Did you still have some sort of control
22 over what you were doing?

23 A. Yeah, I had control over what I was doing.

24 Q. Did you do any drugs the day of the Molina
25 murder?

1 A. No, I did not.

2 Q. How about the day before?

3 A. No, I did not.

4 Q. Now, I want to talk to you about what
5 you've done in this federal case. Before this,
6 before you were arrested in this federal case in
7 December 2015, were you charged with the Molina
8 murder in the state?

9 A. I was, yes.

10 Q. And what happened with those charges?

11 A. Eventually, they were dropped and the
12 federal had picked it up.

13 Q. And in this federal case, did you plead
14 guilty?

15 A. I did plead guilty to the murder.

16 Q. I'm going to show you what's been
17 previously marked for identification purposes as
18 Exhibits 680 and 681.

19 MR. BECK: Your Honor, I move to admit 680
20 and 681.

21 THE COURT: Any objection from the
22 defendant? Not hearing any objection, Government's
23 680 and 681 will be admitted into evidence.

24 (Government Exhibits 680 and 681
25 admitted.)

1 MR. BECK: May I publish to the jury 680,
2 Your Honor?

3 THE COURT: You may.

4 BY MR. BECK:

5 Q. Mr. Montoya, what is this document?

6 A. That's my plea agreement.

7 Q. I'm going to direct you to page 2,
8 paragraph 3. What were you charged with in this
9 case?

10 A. Where?

11 Q. Were you charged with violent crimes in
12 aid of racketeering, conspiracy to murder, and
13 violent crimes in aid of racketeering, murder?

14 A. Yes, that's what it reads.

15 Q. Were you also charged with aiding and
16 abetting in those crimes?

17 A. Yes, sir.

18 Q. Now, I'm going to direct your attention
19 now to paragraph 5 on that same page.

20 A. Yes, sir.

21 Q. What sentence are you facing right now
22 with your guilty plea?

23 A. Facing life.

24 Q. And I'm going to show you Government's
25 Exhibit 681. Are you familiar with this exhibit?

1 A. Yes, sir.

2 Q. Is this the addendum to your plea
3 agreement?

4 A. It is.

5 Q. I'm going to direct your attention to
6 paragraph 2 there. What do you understand this
7 paragraph to mean for you to comply with the
8 addendum to your plea agreement?

9 A. For me to cooperate and tell the truth.

10 Q. And is that what you're doing here today?

11 A. Yes, sir.

12 Q. I'm going to direct your attention to
13 paragraph 6 on the next page of this document. What
14 does this paragraph mean to you?

15 A. That I could possibly have a downward
16 departure.

17 Q. And for that to happen, does the
18 Government have to file a motion on your behalf?

19 A. Yes, they do.

20 Q. Then who makes the ultimate determination
21 whether you can be sentenced below life in prison?

22 A. Myself.

23 Q. Who else makes that final decision in the
24 last sentence there?

25 A. Oh, I'm sorry, yes, the Court. Well, I

1 thought I'd say myself, because I'm here to tell the
2 truth; right? And if I screw that up, that's not
3 going to happen.

4 Q. I got you. Now did you begin cooperating
5 with the Government in January of 2017?

6 A. Yes, sir, I did.

7 Q. What benefits have been provided to you as
8 an FBI informant?

9 A. I have gotten no benefits, really; just
10 gotten some money from the Government.

11 Q. And do you know how much money you've
12 gotten from the Government today?

13 A. Roughly, yes, estimation is about \$800.

14 Q. Would it surprise you if you found out
15 you've been paid \$1,124.31?

16 A. It would surprise me that I got paid that
17 much.

18 Q. But could that be right?

19 A. It could be right.

20 Q. Were you provided contact visits with your
21 family members?

22 A. I have received one contact visit, yes,
23 sir.

24 Q. Were you closed as an FBI informant?

25 A. Excuse me?

1 Q. Were you closed as an FBI informant?

2 A. Oh, yes, I was.

3 Q. When was that?

4 A. It just happened recently. Just happened
5 recently. This year, maybe.

6 Q. Have you done drugs since you've been
7 cooperating as a Government witness?

8 A. I have done drugs before, yes.

9 Q. Tell the members of the jury what drugs
10 you did while you were detained in the Sandoval
11 detention center in Bernalillo?

12 A. When I was in Sandoval, I did Suboxone, I
13 smoked some weed.

14 Q. Who did you get Suboxone from?

15 A. Another inmate that was there.

16 Q. Was it another Government cooperator?

17 A. Yes, it was.

18 Q. Who was it?

19 A. Roy Martinez.

20 Q. Anyone else?

21 A. Yes.

22 Q. Who else?

23 A. Benjamin Clark.

24 Q. Anyone else?

25 A. Those are the ones I can remember.

1 Q. Did you also do drugs while you were a
2 cooperator when you were detained in Lea County
3 Detention Center?

4 A. I did.

5 Q. What drugs did you do there?

6 A. I had done Suboxone there, as well.

7 Q. And while you were cooperating, how often
8 would you do Suboxone?

9 A. Whenever it was available.

10 Q. Were you allowed to do Suboxone?

11 A. Absolutely not.

12 Q. Did you tell the Government you were doing
13 Suboxone at that time?

14 A. I didn't notify them, no.

15 Q. When did you notify the Government?

16 A. I notified them when the jig was up. I
17 notified them a couple weeks ago, three weeks ago,
18 two weeks ago.

19 Q. We'll come back to that.

20 A. Yes, sir.

21 Q. Did you do any other drugs while you were
22 in Lea County Detention Center?

23 A. Might have done some resin of some
24 cocaine.

25 Q. What do you mean, you "might have done

1 some resin of cocaine"?

2 A. I'm sorry. Some people I -- used a spoon
3 to shoot up some cocaine. And I used that same
4 spoon that they used to do cocaine, to mix the
5 Suboxones with. And I mixed it, and I did it.

6 Q. How do you mix Suboxone?

7 A. You just add water, use water.

8 Q. Does the Suboxone dissolve in the water in
9 the spoon?

10 A. Yes, sir.

11 Q. And how did you ingest it from the spoon?

12 A. I snorted it.

13 Q. Did you do any other drugs while you were
14 in Lea County Detention Center?

15 A. No.

16 Q. Did you snort Wellbutrin?

17 A. Oh, yes. I snorted some pills, yes,
18 sorry.

19 Q. Where did you get the Suboxone while you
20 were in Lea County Detention Center?

21 A. I had my girlfriend bring them in for me.

22 Q. How many Suboxone did you have your
23 girlfriend bring in?

24 A. 24.

25 Q. What did you do with those?

1 A. I split them with another individual.

2 Q. Who was that?

3 A. Richard Gallegos.

4 Q. Is he also a Government cooperator in this
5 case?

6 A. He is also a Government cooperator, yes.

7 Q. And what did you do with your -- I guess,
8 how many strips did you have left over when you
9 split with him?

10 A. Half, 12.

11 Q. Why did you split them with Mr. Gallegos?

12 A. We went halfers on this.

13 Q. What does that mean?

14 A. He got the drugs, I brought them in, and
15 we went half. We just split them right in half.

16 Q. Were you allowed to bring in Suboxone at
17 Lea County Detention Center?

18 A. Absolutely not.

19 Q. Did you alert the Government that you were
20 doing that?

21 A. I didn't let them know, no, sir.

22 Q. What else did you bring into Lea County
23 Detention Center?

24 A. A cellphone.

25 Q. Who brought the cellphone in?

1 A. My girlfriend.

2 Q. How long did you have the cellphone?

3 A. I would say a month.

4 Q. What did you do with the cellphone?

5 A. Made calls and watched -- used the
6 internet.

7 Q. What else did you do with it?

8 A. I took pictures and exchanged pictures as
9 well.

10 Q. Anything else?

11 A. That's all. That's all I can remember.

12 Q. Did you send text messages?

13 A. I sent a few text messages, yes, sir.

14 Q. How many pictures did you send or receive
15 on the cellphone?

16 A. I maybe sent between 30 or 40 pictures
17 myself, and I received maybe about the same amount
18 of pictures.

19 Q. And were those pictures in clothing? Were
20 they naked?

21 A. Some pictures were in clothing, other
22 pictures were naked, receiving and outgoing.

23 Q. And who were you sending to or receiving
24 these pictures from?

25 A. My girlfriend.

1 Q. I think you said you called -- you used
2 the phone to make calls. Who did you call?

3 A. I called my girlfriend.

4 Q. How often did you call her?

5 A. Every day.

6 Q. How many times did you call her each day?

7 A. I don't know a total amount of calls that
8 I called her, but it was probably a lot.

9 Q. Are you allowed to have a cellphone in the
10 Lea County Detention Center?

11 A. No, I'm not allowed to have a cellphone in
12 the Lea County Detention Center, no.

13 Q. At that time did the Government know?

14 A. I didn't notify them that I had this
15 phone.

16 Q. When did you notify the Government that
17 you had the phone?

18 A. When the Government -- a couple weeks ago.

19 Q. You said you used the internet on the
20 phone. What did you use the internet for?

21 A. Watched -- went on YouTube, watched
22 pornography, things like that.

23 Q. Now, you said your girlfriend brought it
24 in. Who is your girlfriend?

25 A. Her name is Amelia Alvarado.

1 Q. Was she a corrections officer at the Lea
2 County Detention Center?

3 A. Yeah, she is a corrections -- she was a
4 former corrections officer, yes.

5 Q. How did your relationship with her start?

6 A. There at the county jail.

7 Q. And how often did you talk to her while
8 she was working at the jail?

9 A. I talked to her every day.

10 Q. How did you do that?

11 A. There is a speaker inside the room on the
12 wall, and she and I would communicate through that
13 speaker that's on the wall.

14 Q. Did you talk to her on the days she wasn't
15 working?

16 A. Yes, I did.

17 Q. How did you do that?

18 A. With the cellphone.

19 Q. Besides bringing in drugs and bringing the
20 cellphone and talking to her while you were in jail,
21 what else did you do with CO Alvarado?

22 A. I had sex with her.

23 Q. Are you allowed to have sex with a
24 corrections officer while you're an inmate at Lea
25 County Detention Center?

1 A. No, I'm not.

2 Q. How many times did you have sex with her?

3 A. Three.

4 Q. You and I met on February 3, two weeks
5 ago, to prepare for your testimony. Do you recall
6 that?

7 A. I do, sir, yes.

8 Q. At that time did you tell me about CO
9 Alvarado and about the drugs and the cellphone?

10 A. I didn't let you know at that time, no,
11 sir, I did not.

12 Q. I think you're misremembering. I think we
13 met before that, January 23.

14 MS. DUNCAN: Your Honor, I'm going to
15 object. Counsel is testifying.

16 THE COURT: Don't lead. You've got to
17 work with your witness. Don't lead. I'll strike
18 it. Start over.

19 A. I got confused with the dates. I'm sorry,
20 I apologize.

21 BY MR. BECK:

22 Q. Two weeks ago we met on February 3.

23 A. Okay.

24 Q. Did we meet again about two and a half
25 weeks before that, on January 23, to go over your

1 testimony?

2 A. Yes. My apologies.

3 Q. We'll start chronologically. It will be
4 easier. At that time, when we met January 23, did
5 you tell me about CO Alvarado?

6 A. I didn't, no.

7 Q. Did you tell me about the drugs?

8 A. I did not.

9 Q. Did I ask you about drugs on January 23?

10 A. You did ask me, yes.

11 Q. Did I ask you about the cellphone that was
12 your cell on January 23?

13 A. Yes, you did.

14 Q. Did you tell me at that time it was your
15 cellphone?

16 A. I did not say it was my cellphone, no.

17 Q. Did you tell me that CO Alvarado brought
18 it in to you?

19 A. I did not.

20 Q. Did you tell me you watched porn on the
21 cellphone?

22 A. No, I did not.

23 Q. Did you tell me you exchanged photos with
24 CO Alvarado on January 23?

25 A. I don't remember. Maybe. I don't know.

1 Maybe I did not say it.

2 Q. How did you tell me on January 23 at that
3 first meeting -- how did you tell me that cellphone
4 got into the prison?

5 A. I said Richard Gallegos had got it through
6 a friend of his, by the name of Pate.

7 Q. Pate?

8 A. Pate.

9 Q. And on January 23, did you tell me you had
10 sex with CO Alvarado three times in the county
11 detention center?

12 A. I did not, no.

13 Q. Why didn't you tell me?

14 A. I didn't want to reveal my relationship
15 with her. I didn't want to get her into trouble.

16 Q. And why didn't you want to get CO Alvarado
17 in trouble?

18 A. I was scared for her. I didn't want to
19 drag her into this. I didn't want to ruin what I
20 had with her, my relationship. If I revealed that,
21 it was potentially in jeopardy of maybe ending. I
22 wanted to protect her.

23 Q. You and I met again to prepare for your
24 testimony a couple weeks ago, on February 3; is that
25 right?

1 A. Yes.

2 Q. On February 3 did you tell me what you
3 just told the members of the jury?

4 A. What do you mean?

5 Q. Did you tell me on February 3 about CO
6 Alvarado and the drugs and --

7 A. Yes, I did.

8 Q. Before that, did you know that we had a
9 letter from another inmate that said that the
10 cellphone and the drugs were yours and came in
11 through CO Alvarado?

12 A. I was aware of that, yes.

13 Q. Did you know that other inmates said that
14 you gave them Suboxone?

15 A. Yes.

16 Q. Before February 3?

17 A. Yes.

18 Q. All right. I want to take you to March 7
19 of 2014. Where were you at that time?

20 A. I was housed at Las Cruces, New Mexico,
21 which is Southern New Mexico Correctional Facility.

22 Q. And did you stab Javier Molina on March 7,
23 2014?

24 A. Yes.

25 Q. When was the first time you learned about

1 what was going to happen to Mr. Molina?

2 A. That day.

3 Q. What happened?

4 A. So another inmate had approached me and
5 told me, "It's time to put in work."

6 Q. All right. When was this when this inmate
7 approached you?

8 A. Okay. It was shortly after the count.
9 Count had came, they cleared count, so we're -- all
10 the inmates were all in the pod doing our thing.
11 Another inmate had approached me. We went to my
12 cell, he pulled out a shank, handed it over to me,
13 and said, "It's time to put in work."

14 Q. Let me stop you there, Mr. Montoya.

15 A. Yes.

16 Q. Who was the inmate who approached you?

17 A. They call him Blue. His name is Mario
18 Rodriguez. That's the one that I'm talking about.

19 Q. Where did he approach you?

20 A. In the pod, in the pod. He said, "Come
21 here," called me to my cell. I followed him into my
22 room. We went in. That's -- like I said, he pulled
23 out the shank, handed it over to me. And he said,
24 "It's time to put in work."

25 So I said, "On who?"

1 He says, "On Javier."

2 And I said, "For what?"

3 And he goes, "Because there is paperwork
4 on him."

5 And I asked him to let me see it.

6 He said, "I don't have it no more. I sent
7 it back next door," he goes, "but myself," he goes,
8 "but Dan," meaning Daniel Sanchez, he goes, "Dan and
9 I read it. It's legit paperwork."

10 So I said, "Okay." I said, "Who is going
11 with me?"

12 He says, "You and Kreaper." And Kreaper
13 is Jerry Armenta.

14 And I said, "Where at? Where do we do
15 this at?"

16 He says, "You're going to do it in
17 Javier's cell because it's a blind spot. They won't
18 see it."

19 And I said, "We have to cover the cameras
20 because they're going to see myself and Jerry
21 Armenta going into the cell to go do this crime."

22 And he says, "No, no. We're not going to
23 cover the cameras, because Dan Dan, Daniel Sanchez,
24 didn't want the cameras covered."

25 And I said, "Why?"

1 He goes, "He just don't want them covered
2 because he needs to be seen on camera that he had
3 nothing to do with this because he has a court
4 hearing coming up."

5 And so I was confused about that. I
6 didn't feel comfortable with it. I mean, we needed
7 to cover the cameras, and they didn't want to cover
8 them. So he says --

9 MS. DUNCAN: Your Honor, I'm sorry, I'm
10 going to object to the narrative.

11 THE COURT: Why don't you break it up a
12 little bit? Do a Q and A.

13 BY MR. BECK:

14 Q. After you talked about -- after he hands
15 you the shanks and you talk about the plan -- let me
16 go back for one second. What did you understand he
17 meant when he said, "It's time to put in work"?

18 A. It's time to stab somebody. It's time to
19 put in work. It's time to go, showtime, violence.

20 Q. And what did you understand him to mean
21 when he said: "Dan and I saw the paperwork. It's
22 good"?

23 A. You know, they're just saying, "We've seen
24 the paperwork. It's good. Just trust in me." You
25 know, at the time, you know, they're my big homies,

1 so I figured they're not going to send me on this
2 kamikaze mission to go and do this murder without it
3 being valid. And --

4 Q. Who is Dan Dan that he was referring to?

5 A. Dan Dan is Daniel Sanchez.

6 Q. Do you see him here in this room?

7 A. Yeah.

8 Q. Where is he?

9 A. Right there.

10 Q. What is he wearing?

11 A. A suit and black glasses.

12 MR. BECK: Let the record reflect that Mr.
13 Montoya identified the defendant Mr. Sanchez.

14 THE COURT: The record will so reflect.

15 BY MR. BECK:

16 Q. When you were talking in the room -- in
17 your cell -- I'm going to bring up Government's
18 Exhibit 164.

19 Mr. Montoya, I'm showing you Government's
20 Exhibit 164. Do you see where that says that it's
21 the B pod, 1-A, March 7, 2014?

22 A. Yes.

23 Q. What room were you in?

24 A. It's located at the top of the screen,
25 113.

1 Q. I'm going to circle cell 113 there. Is
2 that your room?

3 A. That's correct.

4 Q. And is this where the conversation with
5 Mario Rodriguez, Blue, happened?

6 A. Yes.

7 Q. When you say you were out on the tier
8 before he called you into the room to tell you this,
9 where were you?

10 A. To the best of my knowledge, that I can
11 remember, I'd be in the lower level, the lower
12 walkway. Not in the day room, but by the shower and
13 my cell, right there, there is a little stoop right
14 there. So I was just chilling right there.

15 Q. All right. Can you reach the screen and
16 point out where you think that was?

17 A. This area here.

18 Q. All right.

19 A. That's the lower level, and that's where I
20 was.

21 Q. So you wrote a line through what's labeled
22 the lower walkway?

23 A. Yeah, and I was about here.

24 Q. All right.

25 A. Somewhere about there when Blue called me

1 to the room.

2 Q. So right behind where there is a little
3 diagonal line breaking up the common area?

4 A. Yes.

5 Q. When you were talking in the room with Mr.
6 Rodriguez, I think you said he was telling you about
7 why the cameras wouldn't be covered?

8 A. Yes.

9 Q. Did he also tell you -- and you said he
10 said that Kreaper was going to be involved?

11 A. Yes, sir.

12 Q. Did he tell you any more of the plan?

13 A. Excuse me?

14 Q. Did he tell you any more of the plan?

15 A. Yeah, he did.

16 Q. What did he tell you?

17 A. Okay. So he tells me that the cameras
18 were not to be covered. And then he just goes on to
19 say, "I'm going in there with you guys. Don't
20 worry. Red and I" -- Red being another individual
21 by the name of Timothy Martinez -- he says, "We're
22 going to be in there. Red is going to -- we're
23 going to lure him by shooting up some Suboxones, and
24 then Red is going to knock his ass out. Once he
25 knocks him out, you guys come in and finish it, take

1 care of the rest."

2 Q. Did Mr. Rodriguez tell you where he got
3 the shank that he handed you?

4 A. Yes.

5 Q. Where did he say that came from?

6 A. He said -- he told me that it came from
7 Rudy Perez' walker.

8 Q. What happened after this conversation with
9 Mr. Rodriguez?

10 A. He and I exited my cell. He then walked
11 up to the commons area into the pod. I walked maybe
12 halfway with him on the lower level. I turned back
13 to my cell. The reason I turned back to my cell is
14 because I was going to change clothing. I was in my
15 gym shorts and a white T shirt, and I changed into
16 my prison green uniform.

17 Q. All right. What happens after you change
18 in your prison greens?

19 A. Okay. I changed. I put the shank in my
20 sock. And then I'm just lingering around the pod,
21 just burning time, just waiting for this plan to
22 happen. Blue, Red, and Javier go up to Javier's
23 cell.

24 Q. Let me stop before you get there.

25 A. Okay.

1 Q. At some point did you have a conversation
2 with Defendant Sanchez?

3 A. Oh. I'm sorry, yes. Yeah, it was very
4 brief. Yes, I did have one.

5 Q. At what point did this happen? Was this
6 before or after you changed in your greens?

7 A. It was -- my apologies -- before, right
8 when I was changing into my prison greens, Mr.
9 Sanchez enters my cell. I have a very brief
10 conversation with him. He says, "Did the carnal
11 tell you what's going on?"

12 I said, "Yes."

13 He tells me, "Make sure it gets done and
14 be trucha."

15 Q. What does that mean?

16 A. Make sure it gets done, the mission that
17 they're sending us on, and be trucha, is just to be
18 careful.

19 Q. And you said "carnal." What's a carnal?

20 A. A carnal means brother.

21 Q. Is that how you refer to other SNM
22 members?

23 A. Yes.

24 Q. Is that how other SNM members refer to you
25 sometimes?

1 A. That's how we used to talk.

2 Q. Did Mr. Sanchez say anything else, or was
3 that the end of the conversation?

4 A. He and I shook hands and we exited my
5 room, and we both walked up to the common area. And
6 I was just there in limbo.

7 Q. All right. I'm going to show you what's
8 been admitted as Government's Exhibit 11, starting
9 with video channel 4. Are you familiar with
10 Government's Exhibit 11?

11 A. Yes, I am, sir.

12 Q. What is this?

13 A. This is the video of the pod before the
14 murder took place.

15 Q. So I'm going to start playing this for
16 you, Mr. Montoya.

17 A. Okay.

18 Q. In the top left-hand corner it says
19 channel 4, 3/7/2014, 17:17:18:406. I think earlier
20 you said that you learned about this from Mr.
21 Rodriguez sometime after count?

22 A. Yes, sir.

23 Q. Approximately what time did count end?

24 A. Count clears at 5:00, sir.

25 Q. At 17:17:18, is this close in time but

1 after you learned from Mr. Rodriguez what the plan
2 was?

3 A. Yes. It was -- from right there is
4 afterwards. But yes, it's close in time.

5 Q. And I'm going to start playing the video
6 for us.

7 A. Okay.

8 (Tape played.)

9 Q. If you'll press pause, please.
10 Mr. Montoya, are you -- sorry, the video
11 says 17:17:34:406. Are you in this frame?

12 A. I am, sir.

13 Q. Where are you?

14 A. I'm going up the stairs. I'm at the
15 bottom of the stairwell.

16 Q. I'm going to circle the individual at the
17 bottom of the stairwell in green. Is that you?

18 A. Yes, sir, it is.

19 Q. And when you said you're putting on your
20 uniform greens, is that the green uniform you're
21 wearing there in that frame?

22 A. That's the clothing I'm speaking of, yes.

23 Q. Please press play.

24 (Tape played.)

25 Q. What are you doing at this point in the

1 video?

2 A. Just waiting, lingering, confused,
3 thinking. Not knowing really what to do.

4 (Tape played.)

5 A. I'm just buying time, I guess, right
6 there.

7 Q. Please press pause.

8 The time now is 17:18:25:406. Is
9 Mr. Molina in this frame?

10 A. Yes, he is, sir.

11 Q. Where is he?

12 A. He's right above where it says 1A-B pod on
13 the right-hand side.

14 Q. The right-hand side, I'm going to circle
15 the gentleman above 1-A-B pod. Is that Mr. Molina?

16 A. Yes, sir.

17 (Tape played.)

18 Q. Now, at 17:18:35:406, what just happened?

19 A. Mario Rodriguez and Javier Molina had just
20 entered the cell. They're getting ready to mix up
21 the Suboxones.

22 Q. Please press play.

23 (Tape played.)

24 Q. And who is at the top left of this screen
25 in the video right now?

1 A. That's Jerry Armenta, Kreater.

2 Q. Please press pause.

3 The time now is 17:19:09:406. What just
4 happened?

5 A. Jerry Armenta went and sat down, and I
6 followed him. I sat down right next to him. I'm
7 right there with the cap on, with the greens and the
8 white towel over my shoulder.

9 Q. All right. At this point do you have your
10 shank?

11 A. Yes, I do. It's in my sock.

12 Q. And do you and Mr. Armenta say something
13 to one another while you're seated here?

14 A. Yes. Yes, sir.

15 Q. What do you say?

16 A. I told him, I said, "Like, what do we do?"
17 And then he shook his head. And I told
18 him, "It's either him or us."

19 And he just repeated what I said to him.
20 He repeats back to me, "It's either him or us."

21 And that was the extent that I recall of
22 our conversation at the top tier.

23 Q. Why are you seated up here at the top of
24 the stairs?

25 A. I'm waiting for my cue to go into the

1 room, for Mario Rodriguez to call myself and Jerry
2 Armenta into the room to stab Javier.

3 Q. Can you see what's going on in the room
4 from where you're seated there?

5 A. I could see what's going on, yes.

6 Q. And just so we're clear, where is
7 Mr. Javier Molina's cell?

8 A. In this frame, it's right there to the
9 right-hand side. You could see it right in the
10 corner, right in the middle.

11 Q. Is that the cell we see half of on the
12 top?

13 A. Yes, that's the cell right there.

14 Q. Please press play.

15 (Tape played.)

16 Q. So as this video is playing, is this when
17 you and Mr. Armenta are talking with one another?

18 A. Yes, we have a conversation, sir. There
19 they go.

20 Q. Please press pause. The time is now
21 17:20:09:406. What did we just see in the last
22 couple seconds?

23 A. The last couple seconds on screen was me
24 walking over to Javier Molina's room. I bend over
25 to pick up a piece of plastic paper for no apparent

1 reason. Jerry Armenta walks in before me, and we're
2 getting ready.

3 Q. What did you see in Mr. Molina's cell
4 before you walked in there?

5 A. I seen him getting choked out, and -- he
6 was getting choked out, and right when he's getting
7 choked out, Mario Rodriguez calls us in.

8 Q. And who was choking Mr. Molina?

9 A. Red, Timothy Martinez, was choking him.
10 And Mario Rodriguez is holding his hands down so he
11 can't take off the choke hold.

12 Q. Please press play.

13 (Tape played.)

14 Q. Please press pause.

15 The time is now 17:20:24:406. Who did we
16 just see exit the room?

17 A. I think that's Timothy Martinez.

18 Q. And what's going on inside the room right
19 now?

20 A. So Timothy lets him go. He exits the
21 room. And right now he's looking back at me and
22 Jerry Armenta stabbing Javier.

23 Q. And how did you stab Javier Molina?

24 A. With a shank.

25 Q. How did you do it in the room? Where were

1 you positioned?

2 A. Javier Molina was passed out on the floor.
3 I had my shank in my hand. I hovered over him and
4 stabbed him.

5 Q. Where were his feet in relation to the
6 door of the cell?

7 A. Okay. His feet were positioned towards
8 the cell door. His head was to the back wall by the
9 window.

10 Q. Was he on his back? Was he on his front,
11 his side?

12 A. He was laying on his back because he was
13 passed out.

14 Q. Where did you position yourself?

15 A. I positioned myself by his waist, and so I
16 could be above his chest area. And that's where I
17 stabbed him, on his chest area.

18 Q. Was your head above his head? Were you
19 positioned the same direction as him?

20 A. We were facing opposite. So I'm hovering
21 over him. He's right there and I'm looking at him
22 direct. I'm looking down at him. So, you know,
23 we're opposite of one another.

24 Q. Are you on top of him at this point?

25 A. Yes, I guess I'm on top of him, yes.

1 Q. And where did you stab Javier Molina?

2 A. In his chest.

3 Q. How many times if you know?

4 A. Half -- maybe 20 times.

5 Q. And what happened?

6 A. I stabbed him and he died. Sorry.

7 Q. What happens in the room?

8 A. Oh, sorry.

9 So we were stabbing him. He gains
10 consciousness, and he gets up, and he says -- he
11 says, "Yasuvo, carnal, yasuvo," meaning, "I'm done,
12 I'm done." He says, "Let me go. Let me go."

13 And I'm telling him -- pointing at him,
14 and I'm telling him, "Stay the F away from me,
15 Javier. Don't come near me."

16 Mario Rodriguez says, "They called it.
17 They called it," meaning they called the code. So I
18 turned back to look at Mario Rodriguez. I attempt
19 to hand him the shank. He says, "No, not yet. I
20 plan on doing that when all that's happening."

21 Javier Molina exits the cell. He just
22 bulldozes his way out the door.

23 Q. Please press play.

24 (Tape played.)

25 A. That happened now.

1 Q. And in the video now, is this where you're
2 stabbing Mr. Molina?

3 A. Yes.

4 Q. Please press pause.

5 The time is now 17:20:53:406. What have
6 we just seen in the last couple of seconds?

7 A. Javier Molina exiting the room. Me and
8 Mario Rodriguez came close together. When we came
9 close together, that's when Javier Molina bulldozes
10 his way out the room. Right there in this frame
11 that's paused now is Mario Rodriguez telling me to
12 get him, so I'm following him right now.

13 Q. And I think you said just a couple minutes
14 ago that you were trying to hand Mario Rodriguez
15 your shank. Why were you doing that?

16 A. That was part of the plan. He told me,
17 "When it's done, hand the shank and I'll get rid of
18 it for you." So I had done my part and I was done
19 doing my part. So I attempted to pass over the
20 shank to Mario Rodriguez, and which he negated at
21 that time.

22 Q. When he said then, "Get him, get him,"
23 what did you take that to mean?

24 A. To continue the other -- to continue the
25 stabbing on Javier.

1 Q. Did you do that?

2 A. I did do it.

3 Q. Please press play.

4 (Tape played.)

5 Q. Please press pause.

6 The time stamp is now 17:21:04:421. Is
7 this you at the bottom of the screen, in the greens
8 with the white cap on?

9 A. Yes, sir, it is.

10 Q. And what did you just do in those last
11 couple seconds?

12 A. I assaulted and stabbed Javier.

13 Q. And it's difficult to see on this video.
14 It almost looks like you're punching Mr. Molina.
15 But what are you doing?

16 A. You can't see, but I have a shank in my
17 hand. I'm stabbing him.

18 Q. And why can't we see that?

19 A. The quality of the video. But I had it
20 positioned in my hand to where it was concealed
21 pretty well, so the video didn't capture it, because
22 of the way I had it.

23 Q. Did you hide it intentionally because you
24 knew you were being filmed?

25 A. Yes, I did.

1 Q. Please press play.

2 (Tape played.)

3 Q. Please press pause. The time stamp is now
4 17:21:14. What have we just seen in the last couple
5 seconds?

6 A. I seen myself getting rid of the shank. I
7 flicked it upstairs to Mario Rodriguez. And the
8 video doesn't capture that, but that's what I did.

9 Q. Is that why we saw Mr. Rodriguez bending
10 down?

11 A. Yes, sir.

12 Q. Did he pick up your shank?

13 A. He did.

14 Q. And where are you now in this frame?

15 A. I'm in the bottom level. I went
16 downstairs. I'm on the bottom level going to my
17 cell.

18 Q. What do you do when you get in your cell?

19 A. I take off those clothes, go in my room,
20 and I switched clothing.

21 Q. Please press play.

22 (Tape played.)

23 Q. And you can stop.

24 When you stabbed Mr. Molina in the chest,
25 did you kill him?

1 A. Yes, I did.

2 Q. Did you have a personal beef with
3 Mr. Molina?

4 A. I had no personal beef with Mr. Molina,
5 no.

6 Q. What were you doing earlier that day at
7 rec time?

8 A. I was playing handball with Mr. Molina.
9 He was my partner.

10 Q. Was that before or after you learned from
11 Mario Rodriguez that you were going to have to kill
12 Mr. Molina?

13 A. That was before.

14 Q. Now, I want to take you back a couple
15 weeks -- or it might be a couple weeks. I want to
16 take you back before March 14, 2017, to a
17 conversation that you had with the defendant Daniel
18 Sanchez, which talked about sending a clear message.
19 Do you remember that conversation?

20 A. Yes, I do, sir.

21 Q. When was that?

22 A. It happened there in the pod. He and --
23 Daniel Sanchez and I were talking. I wanted to get
24 a big SNM tattoo on my stomach, and Daniel Sanchez
25 had a problem with it. He told me that carnals are

1 brothers there that were in that pod hadn't earned
2 the right to sport the SNM tattoo or the Zia symbol
3 with the S.

4 Q. All right. Let me hold you right there
5 for one second. Is this still in 1-A blue pod?

6 A. This is, yes.

7 Q. And you may have said this, but I don't
8 remember it. What was Mr. Sanchez' position in that
9 pod?

10 A. He was the llavero, meaning held the keys
11 to call shots, the shot-caller in my pod.

12 Q. Does that mean he's the leader of that
13 pod?

14 A. Excuse me?

15 Q. Does that mean he's the leader of that
16 pod?

17 A. Oh, yeah, he's -- yeah.

18 Q. And will you bring back up Exhibit 164,
19 please.

20 Was this conversation happening in the
21 lower level?

22 A. It was happening at my door. We were
23 talking at the window of 113.

24 Q. So you're still in cell 113 at that time?

25 A. Yes, sir.

1 Q. So I think you said that he was talking
2 about carnals in the pod not earning their tattoos?

3 A. Yes.

4 Q. What did he say then?

5 A. He -- we went on. Our conversation went
6 on. Like I said, he was just displeased with the
7 brothers putting on the tattoo when they hadn't
8 earned it. So his position was: You have to earn
9 the tattoo. And he said that he's sick and tired of
10 us, the SNM in that unit, putting on the tattoo and
11 not doing nothing for it; and people going into our
12 unit -- "people" meaning other rival gangs that
13 accidentally get shuffled into our pod, and not
14 leaving our pod -- they're PC'ing out of our unit
15 without a scratch on them.

16 Q. Let me stop you there for one second. You
17 said a couple of things there. What does PC mean?

18 A. Protective custody.

19 Q. And what does it mean to PC out of a pod?

20 A. It means to leave, to get of harm's way,
21 to get out.

22 Q. And why would it be significant that other
23 gang members are leaving your SNM pod without a
24 scratch on them?

25 A. Well, that's our SNM pod, and they're

1 leaving -- they're going to, you know, committee,
2 and not coming back. They're PC'ing from the
3 committee and going to another unit without a
4 scratch on them, which he was upset about. And --

5 Q. Is it an SNM rule that you're supposed to
6 hit or assault rival gang members when you're
7 incarcerated with them?

8 A. If you're able to, you get them. That's
9 it.

10 Q. So he said he was sick and tired of people
11 PC'ing out of the pod?

12 A. Yes.

13 Q. What else did he say?

14 A. He just said any carnals here, if they're
15 not down to pick up a piece, a fierro, and put it to
16 use, and if they're not down to pick up time for the
17 SNM, to get the hell out, to get off the unit. Do
18 us all a favor and just leave.

19 Q. What does "pick up a fierro" mean?

20 A. "Pick up a fierro" is like getting a shank
21 and putting it to use, using it.

22 Q. And then you said "getting more time."
23 What happens when someone is shanked in a pod? What
24 happens to the person who shanked him?

25 A. Well, you could potentially receive more

1 jail time, more prison time added onto your sentence
2 that you're already doing. And that's what he meant
3 by that. You know if you're not willing to pick up
4 more time, just leave.

5 Q. Did he say anything else in this
6 conversation?

7 A. That's all I can remember at this time.
8 That's the extent of our conversation.

9 MS. DUNCAN: Your Honor, could we ask for
10 a limiting instruction?

11 THE COURT: I think it's 803(3), so I
12 don't think that you're entitled to a limiting
13 instruction.

14 BY MR. BECK:

15 Q. What did you understand Mr. Sanchez to be
16 conveying to you during this conversation?

17 A. If you ain't down for the cause of the
18 SNM, to put in work, put in violence for it, just to
19 PC yourself out, then. Do us all a favor and PC,
20 just get out. That's what I took from it.

21 Q. And how soon -- how close in time was this
22 to the Molina murder?

23 A. A few weeks, maybe.

24 Q. You said that you had assaulted rival gang
25 members when you first joined the gang?

1 A. Yes, sir.

2 Q. Have you stabbed any other gang members?

3 A. No, I did not.

4 Q. I want to talk to you about a conversation
5 you had with Mr. Baca at the door to your cell when
6 you were in yellow pod at the Southern facility.

7 A. Yes, sir.

8 Q. Who was that conversation with?

9 A. Myself and Anthony Baca.

10 Q. And is Mr. Baca in the courtroom today?

11 A. Yes, he is.

12 Q. Where is he?

13 A. In the back over there.

14 Q. What is he wearing?

15 A. A green suit.

16 MR. BECK: Let the record reflect Mr.
17 Montoya identified the defendant Baca.

18 THE COURT: The record will so reflect.

19 BY MR. BECK:

20 Q. What was Mr. Baca's position in the SNM at
21 that time?

22 A. At that time, what I understood, he was
23 the leader of all of the SNM.

24 Q. Now, I'm going to show you Government's
25 Exhibit 162. Do you recognize what's depicted in

1 that picture?

2 A. It's a diagram of our unit, SNM unit.

3 Q. I think when this conversation occurred
4 with Mr. Baca, you said you were in yellow pod?

5 A. Yes, we were in yellow pod at my door.

6 Q. And where is that on this diagram?

7 A. It's the middle. It's the middle pod.

8 Q. I'm going to mark that with a Y. And
9 where is blue pod in relation to this?

10 A. It would be to the right of that.

11 Q. Is that down here on the bottom, where I
12 just marked B?

13 A. Yes, sir.

14 Q. And which cell were you in when you had
15 this conversation with Mr. Baca?

16 A. I was on the bottom level in 114.

17 Q. All right. Is that this cell, three from
18 the shower?

19 A. Yes.

20 Q. And what happened in that conversation
21 with Mr. Baca?

22 A. He and I just -- we discussed my future.
23 And I was getting ready to parole out, to leave the
24 facility at that time. I had two or three years at
25 that time he and I had this conversation. And he

1 asked me -- you know, he and I were barely getting
2 to know each other. I hadn't known him before that.
3 So we're getting acquainted with one another.

4 Q. So let me ask you this: If you had three
5 to four years there, was this during the point in
6 time when you were telling us about earlier where
7 you had stopped using Suboxone and started selling
8 it to build up your \$5,000?

9 A. I was clean, yes.

10 Q. So this conversation with Mr. Baca
11 happened while you were selling those drugs?

12 A. Yes.

13 Q. And what did Mr. Baca tell you the plan
14 for you was?

15 A. We discussed -- I told him a little bit
16 about me and my background, who I am. He wanted to
17 know my strengths. And I told him where I was from,
18 what I did out there on the streets. I told him I
19 had drug connections, that I sold drugs out there on
20 the street. And I -- you know, I guess Mr. Baca had
21 seen potential in that. He asked me, "You know,
22 when you get out, you could do good things for the
23 onda, for the SNM, for the gang. I could put you to
24 work to be a treasurer; you know, collect money,
25 sell dope for the clique."

1 And I obliged; I was all for it at that
2 time.

3 Q. Let me stop you there. I think you talked
4 about what you did on the streets before you became
5 an SNM member. What did you do on the streets
6 before you became an SNM member, in 2001, when you
7 got your murder conviction?

8 A. I sold dope.

9 Q. For how long before 2001?

10 A. That's all I ever done.

11 Q. And who would you sell dope to?

12 A. Dope fiends on the street. Drug addicts.

13 Q. What drugs did you sell?

14 A. Cocaine, rock cocaine.

15 Q. Were you a drug dealer before you went to
16 prison in 2001?

17 A. I was, yes.

18 Q. So Mr. Baca said he wanted you to be a
19 treasurer. What did he explain to you that meant?

20 A. He told me, you know, to meet up with
21 brothers out there, you know, that weren't really
22 using drugs and that were doing good for themselves.
23 That was my take on it, you know. And everybody at
24 the end of, you know, the month or a couple of
25 weeks, put a pot together of money. So I collect

1 money for whatever duration at that time, whatever,
2 till we reached our goal, and then do something with
3 that money, whether turn it -- "turn it" meaning buy
4 additional drugs to make more money, and more drugs,
5 things like that. Then I was under the impression
6 like, "You want me to send any money or dope back?"

7 Right away, he's, like, "No, you don't got
8 to send anything back right away. Build it up out
9 there. Then, you know, when everyone is on their
10 feet, when things are going good, maybe you could
11 trickle some of that dope money and that dope down,
12 you know, our way."

13 Q. So send it back. What did you understand
14 he meant when he talked about sending money back?

15 A. Just contributing to the brothers there.
16 And everyone is not rich, so, you know, give money
17 to the SNM.

18 Q. The brothers there, do you mean the SNM
19 members inside of the prison?

20 A. I mean the SNM members inside the prison,
21 yes.

22 Q. During the state case of the murder of
23 Javier Molina, was Jerry Armenta a co-defendant of
24 yours in that case?

25 A. He was, yes.

1 Q. Did he write a letter to you to give to
2 your lawyer saying that he was responsible for the
3 murder?

4 A. He did.

5 Q. What did you know about that letter?

6 A. I didn't know too much about that letter.
7 It came to me as a surprise. I didn't ask him to
8 write it.

9 Q. But did you discuss with Mr. Armenta
10 before he wrote that letter that he was going to
11 take the responsibility for the murder?

12 A. Blue -- Blue had came up with that idea of
13 Jerry Armenta taking full responsibility of the
14 Molina murder, yes.

15 Q. And how do you know Blue, Mario
16 Rodriguez -- is that Mario Rodriguez, Blue?

17 A. Blue is Mario Rodriguez.

18 Q. And how do you know Mr. Rodriguez came up
19 with that idea?

20 A. He discussed it with me. He told me.

21 Q. Did you discuss that with Mr. Armenta
22 before he wrote that letter?

23 A. No, I didn't.

24 Q. And did you receive that letter?

25 A. I received it, yes.

1 Q. When you read through that letter -- let
2 me put it up.

3 A. Okay.

4 Q. Exhibit 756. I'm showing you what's been
5 admitted as Exhibit 756. It looks to me like in
6 that third paragraph where he discusses what
7 happened inside the cell. Do you see that?

8 A. Where it says "Jerry Montoya and I"?

9 Q. Right.

10 A. Okay.

11 Q. Go ahead. And if you haven't read this in
12 a while, go ahead and read through that paragraph,
13 and tell me when you're done.

14 Are you familiar with that third paragraph
15 there?

16 A. Yes, sir, I am. It reads --

17 Q. You don't have to read it.

18 A. Okay.

19 Q. Basically, does it say that -- does it say
20 that the Molina murder was because of hostility
21 between Jerry Armenta and Mr. Molina in that cell?

22 A. Yes, that he disrespected Jerry Armenta.

23 Q. And the last sentence in that, "Jerry
24 Montoya did not know what was going to happen. I
25 didn't even know it was going to happen. I acted

1 clearly out of instinct, felt that it or my life was
2 in clear and present danger." Is that true?

3 A. No, it's not.

4 Q. When you received that letter, what did
5 you do with it?

6 A. I turned it in to my attorney.

7 Q. Did you turn it in to your attorney and
8 tell your attorney that it was true?

9 A. I did.

10 Q. Why did you do that?

11 A. Because that was my way out. That was my
12 ticket to freedom. That was my way out of jail.
13 And I had to spend a significant amount of prison
14 time. And I wanted to get out. And that letter was
15 my way out potentially.

16 Q. I want to talk about the rules and
17 leadership in the SNM gang. If an SNM member is
18 challenging a leader to become a leader of the SNM,
19 what does that leader who is being challenged have
20 to do?

21 A. He has to defend his position.

22 Q. Is that a rule of the SNM enterprise that
23 he has to defend his position?

24 A. Absolutely.

25 Q. Why is that?

1 A. Because I'm pretty sure the leader at that
2 moment in time is not wanting to relinquish his
3 leadership into something so powerful.

4 Q. And when you were at the Southern New
5 Mexico Correctional Facility with Defendant Baca,
6 what was his position in the SNM? I think you
7 said --

8 A. His position was the ultimate leader of
9 the SNM.

10 THE COURT: Mr. Beck, would this be a good
11 time for us to take our afternoon break?

12 MR. BECK: It would, Your Honor.

13 THE COURT: All right. We'll be in recess
14 for about 15 minutes. All rise.

15 (The jury left the courtroom.)

16 THE COURT: All right. We'll be in recess
17 for about 15 minutes.

18 (The Court stood in recess.)

19 THE COURT: Let's go on the record. Ms.
20 Fox-Young, did you have some exhibits you need to
21 admit? Do you want to do that while we're waiting
22 for the jury?

23 MS. FOX-YOUNG: Yes, Your Honor. Your
24 Honor, we move the admission of V1, V2, V3, V4, V6,
25 V7, V9, V10, V11, V12, V14, V16, V17, V18, V19, V20,

1 V21, V22, V23, V26, V27, V28, V29, V30, and V31.

2 And I believe the Government doesn't object.

3 THE COURT: Is that correct?

4 MR. BECK: No objection, Your Honor.

5 MS. JACKS: Your Honor, this is the first
6 I'm hearing of it. I'd just like a chance to review
7 it and see if I have any objection.

8 MS. DUNCAN: Your Honor, Team Baca also
9 has an issue we'd like to raise with you before the
10 jury comes in, after we deal with this.

11 THE COURT: Go ahead.

12 MS. DUNCAN: So I think Mr. Beck is about
13 to get into a line of questioning that was disclosed
14 to us a week ago about a purported feud between Mr.
15 Baca and Mr. Rubio. And we'd ask the Court to
16 exclude this line of questioning. It's not relevant
17 to any fact at issue in this case. It's more
18 prejudicial than it is probative. It's about an
19 alleged feud; that Mr. Baca ended up putting a bunch
20 of magazines around his body to protect himself from
21 Mr. Rubio, going out into the yard for a
22 confrontation. And that --

23 THE COURT: Let me ask this: I don't see
24 that on any of the letters, so I don't have any
25 knowledge of this.

1 MR. BECK: There's no statements. This is
2 actually conduct. Well, I guess there might be a
3 couple of statements; that's not true. It was just
4 disclosed to us on February 3. And it was disclosed
5 to counsel, via 302, right after that. I don't
6 think you would have that.

7 MS. DUNCAN: I have it here, Your Honor,
8 if you'd like.

9 THE COURT: Let me look at the 302,
10 because this isn't ringing any bells with Mr.
11 Montoya for me.

12 MS. DUNCAN: For the record, Your Honor,
13 it's Bates No. 51643.

14 THE COURT: Why don't you do this:
15 Approach before you get into this, because this is
16 all kind of new to me. I'm not sure I've seen this
17 302.

18 MR. BECK: All right.

19 THE COURT: Was there an objection, Ms.
20 Jacks?

21 MS. JACKS: I just need some time. This
22 is a bunch of physical location histories. And if I
23 could have until tomorrow morning to respond, that's
24 what I would like. Thank you.

25 THE COURT: All right. All rise.

1 (The jury entered the courtroom.)

2 THE COURT: All right. Everyone be
3 seated.

4 All right. Mr. Montoya, you're still
5 under oath.

6 Mr. Beck, if you wish to continue your
7 direct examination of Mr. Montoya, you may do so at
8 this time.

9 BY MR. BECK:

10 Q. Mr. Montoya, we were just talking about
11 the rules of SNM leaders being challenged. Who was
12 the leader of green pod at the time you were at
13 Southern?

14 A. To my understanding, when I was there,
15 Javier Rubio was one of them; Benjamin Clark might
16 have had an influence as well. His name is Cyclone.

17 Q. Does Javier Rubio also go by BB?

18 A. Yes, he does.

19 Q. I want to show you what's been admitted as
20 Government's Exhibit 72. What is that?

21 A. That's the shank that I had.

22 Q. And what happened after you stabbed Javier
23 Molina with this shank?

24 A. I gave that shank to Mario Rodriguez,
25 Blue, and he went to destroy it and dispose of it,

1 and that's the aftermath of that.

2 Q. And the wrapping on there -- what's the
3 plastic wrapping?

4 A. It's just basic Saran Wrap.

5 Q. One moment.

6 A. It's for the handle.

7 Q. I'm going to show you what's been admitted
8 as Government's Exhibit 3. What is that?

9 A. That's a piece of metal. That's a shank.

10 Q. Is that the shank that you stabbed Javier
11 Molina with?

12 A. Yes, sir. Yes, it is.

13 Q. Just to be clear, was that shank bent when
14 you stabbed Javier Molina with it?

15 A. It was not, no.

16 Q. Was it straight at that time?

17 A. It was straight at that time, yes.

18 Q. I want to talk to you about a conversation
19 you had when you were detained in Torrance County.

20 Do you know who Rudy Perez is?

21 A. Yes, I know him.

22 Q. Who is Rudy Perez?

23 A. Rudy Perez is Rudy, Roo Dog.

24 Q. Is he in this courtroom?

25 A. Yes, he is.

1 Q. Where is he?

2 A. Sitting at the table, with the glasses on.

3 Q. What is he wearing? Is he wearing a
4 sweatshirt?

5 A. Gray sweater, gray hair.

6 MR. BECK: Let the record reflect that Mr.
7 Montoya identified the Defendant Rudy Perez.

8 THE COURT: The record will so reflect.

9 BY MR. BECK:

10 Q. Did you have a conversation in Torrance
11 County with Mr. Perez?

12 A. Yes, I did.

13 Q. Was that after the indictment in this
14 case?

15 A. Yes. We were housed at Torrance County
16 together.

17 Q. Did Mr. Perez tell you what he did in this
18 case?

19 A. Yes, he did.

20 Q. What did he say he did?

21 MS. JACKS: Can we ask for a limiting
22 instruction?

23 THE COURT: Why don't y'all approach and
24 tell me which conversation this is.

25 (The following proceedings were held at

1 the bench.)

2 THE COURT: Which one is this? Is this
3 where Perez admits to Montoya -- admits that he
4 provided the shanks?

5 MR. BECK: Yes.

6 MS. JACKS: I think this is the one they
7 brought up earlier.

8 MR. BECK: Yes.

9 THE COURT: I think this is not going to
10 come in under the co-conspirator statement. It's
11 going to be admissible against Perez.

12 MR. BECK: Yes.

13 THE COURT: And you're going to exclude
14 the mention of Sanchez?

15 MR. BECK: Yes.

16 THE COURT: Even if you didn't, I'd
17 probably keep it out under 403.

18 MR. BECK: Sure.

19 THE COURT: Okay. Well, I'll deal with
20 you later.

21 MS. FOX-YOUNG: Do you want me to do it
22 now?

23 THE COURT: I just don't see how it's
24 coming in. But I'll give you a shot during your
25 cross.

1 MR. BECK: Your Honor, this is probably a
2 good time. I think all I have left after this is
3 the incident with Javier Rubio, BB.

4 THE COURT: This is the one with the
5 statement that Ms. Duncan just handed me?

6 MR. BECK: That's right.

7 THE COURT: Let me take a look at that.
8 Go ahead.

9 (The following proceedings were held in
10 open court.)

11 BY MR. BECK:

12 Q. Mr. Montoya, when you were talking with
13 Mr. Perez, did he tell you that he provided his
14 walker to be fashioned into the shanks in this case?

15 A. Yes, he did.

16 Q. And what -- did he say that that was --
17 what did he say about him doing that?

18 A. That he wasn't in such good health; you
19 know, that was his way of contributing to the SNM.

20 Q. And what did you understand him to mean by
21 that?

22 A. My understanding is that he's in fairly
23 bad health, and he can't put in work himself, you
24 know. So in order for him, you know, to stay in
25 good graces with the SNM, they asked him a favor, to

1 get a piece of metal off of his walker. And he
2 obliged, and he gave up that piece of metal to
3 contribute whatever.

4 Q. So did you understand that to be his way
5 of putting in work?

6 A. Absolutely, yes.

7 Q. And how did you put in work in the Javier
8 Molina murder?

9 MS. JACKS: May I just interrupt, and ask
10 for a limiting instruction, please?

11 THE COURT: Well, right now it's just a
12 statement that's admissible against Mr. Perez. So
13 you can only consider this in discussing the charges
14 against Mr. Perez. You can't use this statement for
15 discussing the charges against any of the other
16 defendants.

17 Mr. Beck.

18 BY MR. BECK:

19 Q. And how did you put in work in the Javier
20 Molina murder?

21 A. I had to go and stab Javier. That's how I
22 put in work.

23 MR. BECK: Your Honor, may we approach?

24 THE COURT: You may.

25 (The following proceedings were held at

1 the bench.)

2 THE COURT: I think if I've got a grasp of
3 what the statement is -- I don't know what I did
4 with it up here, but I read it. What's your
5 objection to it?

6 MS. DUNCAN: I had a couple of objections,
7 Your Honor. One, it was just disclosed to us after
8 Javier Rubio --

9 THE COURT: I don't have it in front of
10 me. But the 302, I think, was dated February 3. So
11 this has come up in the middle of the trial?

12 MS. DUNCAN: That's correct. So it came
13 up after Javier Rubio testified, is one; so it's too
14 late for us to do anything with it.

15 THE COURT: Is he subject to recall?

16 MS. DUNCAN: He is. But I'd rather not
17 re-call him. I would have rather gotten it out on
18 cross. This is not relevant, assuming it's true.
19 These two had a beef and they resolved it with
20 violence.

21 THE COURT: What are you hoping to do with
22 the statement?

23 MR. BECK: I think it's probative of the
24 fact that Anthony Baca was a leader, that when he
25 was challenged in his leadership position by BB,

1 that he was going to go out there and handle it,
2 just as this witness testified to. That's how the
3 SNM operates. So I think it's extremely probative
4 of that.

5 I also think it's probative of the fact
6 that just the way that the gang operates, that when
7 they're the challenged, they have to go battle it
8 out; that Mr. Baca was willing to put in work. I
9 don't think the danger of unfair prejudice outweighs
10 the probative value, because nothing came of it.
11 They're not disputing that Mr. Baca never stabbed
12 Mr. Rubio. We haven't got in, in that there was --
13 Mr. Baca put a hit on Rubio, the Court has ruled, I
14 understand it's probative of Mr. Baca being a leader
15 of the SNM, which is why he's indicted, which he is.

16 MS. DUNCAN: This witness has already
17 testified Mr. Baca is a leader in the SNM. I think
18 for these two men, it raises a sub issue because
19 they went out and had this conversation and resolved
20 it, it brings the specter of violence for no real
21 purpose in this case. For that reason, we also ask
22 you to exclude it.

23 THE COURT: I do think it has some 401
24 relevant purpose, and that seems to be the really
25 only attack here. I don't see it being a 403

1 problem. So I'm going to overrule the objection and
2 allow the Government to ask the question. There are
3 going to be statements that come up, and I'm just
4 going to deal with them in trial, and this looks
5 like one of them. So I'll overrule the objection.

6 MS. DUNCAN: Can I get the 302 back from
7 you?

8 THE COURT: When I find it.

9 MS. FOX-YOUNG: Just so I know, am I
10 permitted to question on Mario Rodriguez with regard
11 to that statement?

12 THE COURT: Of what he said about Perez,
13 yeah, but you can't -- I don't think you can bring
14 up the statement of what Mr. Montoya is saying that
15 Mr. Sanchez said.

16 MS. FOX-YOUNG: I understand. I just want
17 to make sure that I'm following the Court's order,
18 if I ask about Mario.

19 THE COURT: I don't know if anybody has
20 any objection to that.

21 MR. BECK: I think that's fair.

22 THE COURT: So if you don't go in that
23 direction, I don't have any problem with it.

24 If I find it, I'll tell you.

25 MS. DUNCAN: Thank you. I appreciate it.

1 (The following proceedings were held in
2 open court.)

3 THE COURT: All right. Mr. Beck.

4 BY MR. BECK:

5 Q. Mr. Montoya, during the time you were at
6 Southern New Mexico Correctional Facility with Mr.
7 Baca and Javier Rubio, or BB, did Mr. Baca ever feel
8 like his leadership was being challenged by Mr.
9 Rubio?

10 A. That's what I understood, yes.

11 Q. What happened?

12 A. They were having a dispute over prison
13 politics. Javier Rubio and others in green pod
14 didn't agree with the way Mr. Baca was running the
15 unit, or his rules of the SNM. I don't know the
16 specifics of his dispute with him, but --

17 Q. And at some point did you talk about this
18 with Mr. Baca?

19 A. Yes.

20 Q. Where were you?

21 A. We were in his cell.

22 Q. Which pod were you in?

23 A. It was on the lower level, 111. We had
24 that conversation.

25 Q. Was this in blue pod or yellow pod?

1 A. Blue pod. Blue pod.

2 Q. And what did Mr. Baca do because he
3 believed that Mr. Rubio was challenging him for his
4 leadership?

5 A. He was going to go out there and defend
6 himself, his leadership position.

7 Q. What happened when you were in cell 111
8 and he told you that?

9 A. He asked me and another individual, Chris
10 Trujillo -- we call him Silly -- to strap him up;
11 meaning we got some magazines, some books, and
12 strapped them around Mr. Baca's body, you know, his
13 stomach area, with an Ace bandage. He had his shank
14 in his left -- I think in his left knee brace. He
15 was preparing himself to go out there and go to war
16 with somebody that was challenging him. And that's
17 what he did.

18 Q. And what were the magazines and books
19 intended to do?

20 A. To stop any type of harm that was going to
21 be inflicted upon him, any type of stab wound. It
22 wouldn't penetrate the magazines, so he would be
23 okay. He wouldn't get stabbed.

24 Q. How did Mr. Baca come to see Mr. Rubio, if
25 you're in different pods?

1 A. He asked the control officer to pop the
2 door of green pod. BB was out at recreation. He
3 was going to go outside and be in the phone yard,
4 which the unit manager, the case worker, and those
5 offices are located. The CO would then come, when
6 green pod's recreation time is over, open that gate,
7 and they would exit the yard, and Mr. Baca would
8 have -- or Javier Rubio would have free rein to each
9 other. It would just be nothing but air and
10 opportunity at that point.

11 Q. Did this happen? Did Mr. Baca go out
12 there with the shank in his knee brace?

13 A. He went -- he went; I guess they talked
14 out their grievances with each other, the
15 disagreement. Nothing ever happened. Nothing ever
16 came of it. I guess at that point they squashed it
17 for whatever reason. I wasn't present for the talk.

18 MR. BECK: May I have a moment, Your
19 Honor?

20 THE COURT: You may.

21 MR. BECK: Pass the witness, Your Honor.

22 THE COURT: Thank you, Mr. Beck.

23 Ms. Duncan, are you going to go first?

24 MS. DUNCAN: No, Your Honor.

25 THE COURT: Ms. Fox-Young.

1 Ms. Duncan, I did find your statement, if
2 you want it. Is there any chance you can make me a
3 copy of that?

4 MS. DUNCAN: I can, Your Honor.

5 THE COURT: Ms. Fox-Young.

6 CROSS-EXAMINATION

7 BY MS. FOX-YOUNG:

8 Q. Mr. Montoya.

9 A. Good evening.

10 Q. You've been looking for a ticket to
11 freedom for a pretty long time, haven't you?

12 A. Yes.

13 Q. Since about the last time you plunged that
14 shank into Javier Molina's chest and finished him
15 off?

16 A. No.

17 Q. You talked to the Government the next day,
18 didn't you?

19 A. I don't recall that.

20 Q. You don't recall that. And a number of
21 times since?

22 A. I talked to them, yes.

23 Q. We'll talk about all those details, but
24 first, let's talk about this recent meeting that you
25 had on January 22, 2018. Do you remember that with

1 Mr. Beck, with the Government?

2 A. Yes, ma'am.

3 Q. And that's where for the first time you
4 told the Government that Mr. Perez volunteered
5 shanks from his walker; right?

6 A. I had thought I had disclosed that
7 information before.

8 Q. You realize that you hadn't?

9 A. I guess not. I guess not.

10 Q. Now, it's your allegation that the
11 conversation that you had with Mr. Perez was at
12 Torrance County Detention Center; right?

13 A. Yes, ma'am.

14 Q. Do you remember when you left Torrance
15 County Detention Center?

16 A. Yes, I do.

17 Q. When was that?

18 A. I think it was October of 2017, ma'am.

19 Q. And so October 2017. Do you think maybe
20 it was maybe October of 2016?

21 A. Yes.

22 Q. So 15 months after you left Torrance
23 County Detention Center, you told the Government for
24 the first time what you've just told the jury?

25 A. Yes.

1 Q. Were you aware -- did you also tell the
2 Government if you knew that Mario Rodriguez came in
3 and took those shanks from Rudy Perez? From his
4 walker, excuse me -- not from Rudy Perez.

5 A. Rudy told me that he gave him the shanks.

6 Q. That's not my question. My question was:
7 Were you aware that Mario Rodriguez went into his
8 cell and he's testified that he actually took them
9 off the walker himself? Were you aware of that?

10 A. No.

11 Q. Okay. Well, let's talk about some other
12 things that you were doing around the time that you
13 made this statement to the Government on January 22,
14 2018. You talked a little bit about Amelia
15 Alvarado, your girlfriend?

16 A. Yes, ma'am.

17 Q. She was a correctional officer?

18 A. She was.

19 Q. At what facility?

20 A. Lea County.

21 Q. And she's been fired?

22 A. Yes.

23 Q. And she's been fired because of things
24 that she did with you?

25 A. Yes, ma'am.

1 Q. Can you tell the jury how old she is?

2 A. 29.

3 Q. 29?

4 A. She's 29.

5 Q. And she's carrying your baby, isn't she?

6 A. No, she's not.

7 Q. She's not?

8 A. Not that I'm aware of, no.

9 Q. Do you remember telling the Government
10 that she is?

11 A. No.

12 Q. Just a minute, Mr. Montoya.

13 A. Yes, ma'am.

14 Q. So tell me when your relationship started
15 with Ms. Alvarado.

16 A. Last year, about October.

17 Q. And that was while you were incarcerated
18 at that facility?

19 A. Yes, ma'am.

20 Q. In Lovington?

21 A. Yes, ma'am.

22 Q. You said that you had sex with her about
23 three times?

24 A. Yes, ma'am.

25 Q. When was the first time?

1 A. The 21st of December.

2 Q. Where did you have sex with her in the
3 facility?

4 A. In the multipurpose room.

5 Q. How were you able to do that without
6 getting caught?

7 A. She and I snuck away.

8 Q. You snuck away in the evening?

9 A. I'm not exactly too sure what time it was,
10 ma'am.

11 Q. Okay. And when was the second time?

12 A. I'm thinking December 24.

13 Q. Same thing, multipurpose room?

14 A. Yes, ma'am.

15 Q. And when was the third time?

16 A. The 26th or 27th, somewhere around there.

17 Q. And so it's your testimony that you have
18 not talked to the Government at all about
19 Ms. Alvarado being pregnant?

20 A. I don't believe she's pregnant, no.

21 Q. Have you talked to Ms. Alvarado about
22 wanting her to have your baby?

23 A. Yes.

24 Q. But you don't think she's carrying your
25 baby?

1 A. No, she's not carrying my baby.

2 Q. Was she at some time?

3 A. Could have been.

4 Q. Could have been?

5 A. I don't know.

6 Q. You exchanged a number of letters with
7 Ms. Alvarado, did you not?

8 A. After our relationship was disclosed, I
9 exchanged letters with her, yes, ma'am.

10 Q. You didn't exchange any letters with her
11 in December of 2017?

12 A. Oh, yes.

13 Q. Maybe they were intercepted?

14 A. There was one intercepted, yes.

15 Q. Have you seen those letters since?

16 A. I have, yes. Yes, ma'am.

17 Q. Are you -- you're look forward to getting
18 out and spending some time with Ms. Alvarado?

19 A. I would like to.

20 Q. You've made some assurances to her about
21 what your behavior will be like on the outside?

22 A. That I'll behave.

23 Q. That you'll try not to kill people
24 anymore?

25 A. Absolutely.

1 Q. You remember saying that to her?

2 A. I will try, yes.

3 Q. And you remember saying that sometimes you
4 don't have a choice but to hurt people?

5 A. It depends.

6 Q. Do you remember saying that?

7 A. Yes, ma'am. Yes, ma'am.

8 Q. But that you'd try very hard not to kill
9 people?

10 A. I'll try very hard not to kill no one
11 else.

12 Q. And I think you testified on direct that
13 at some point after you carried on this relationship
14 for a period of time, the jig was up, you got
15 caught; right?

16 A. Yes, ma'am.

17 Q. And the cellphone that Ms. Alvarado had
18 secreted into the facility was found?

19 A. Yes.

20 Q. And it was discovered that you had been
21 having sexual relations with her?

22 A. Not off the cellphone. I admitted it.

23 Q. When did you admit it?

24 A. I don't know the date. It just happened
25 two weeks ago.

1 Q. Right. You were talking about it with Mr.
2 Beck when you met with him on February 3, and you
3 told him all this?

4 A. Oh, yes. Yes, ma'am.

5 Q. But I'm talking about before that. There
6 was a time, was there not, when it was discovered
7 that you had a cellphone in there and it was seized?

8 A. Um-hum.

9 Q. Do you remember when that was?

10 A. The beginning of January, maybe, ma'am.

11 Q. And do you know how it came to be that
12 that cellphone was discovered?

13 A. No. I wasn't there at the facility.

14 Q. Oh, they found it while you were gone?

15 A. Yes.

16 Q. You were housed in the facility with an
17 inmate who goes by the name Shadow; is that right?

18 A. Yes, ma'am.

19 Q. Who is Shadow?

20 A. Roy Martinez. He's another cooperator.

21 Q. You're aware that along with the cellphone
22 that was found and the drug paraphernalia and the
23 drugs, there was also a letter from Shadow?

24 A. Yes, ma'am.

25 Q. How did it come to be that that letter

1 from Shadow was in the cell?

2 A. It was not in my cell. They think they
3 found that in his cell, ma'am, with the other
4 paraphernalia.

5 Q. Have you seen that letter?

6 A. Yes, ma'am.

7 Q. Are you aware of the allegation that you
8 provided your tablet -- you know you had a tablet
9 from this case; right?

10 A. Oh, yes, ma'am.

11 Q. Are you aware of the allegation that you
12 provided your tablet to be recorded, so that images
13 of dead bodies could be recorded by COs?

14 A. By the STIU officer at that facility, yes.

15 Q. Okay. Including the video of the Molina
16 murder?

17 A. I don't know if it was recorded, ma'am. I
18 don't recall that.

19 Q. You don't remember that. Are you aware of
20 the allegation that you were using both cocaine and
21 meth and Xanax, and those were in the facility?

22 A. I'm aware of that allegation, yes, ma'am.

23 Q. And that Ms. Alvarado was bringing in
24 meth?

25 A. There was no meth.

1 Q. Are you aware of that allegation?

2 A. I'm aware of the allegation.

3 Q. So it's your testimony that there was no
4 meth, but there was cocaine?

5 A. Yes.

6 Q. And there was Xanax?

7 A. Yes, there was.

8 Q. And there was Wellbutrin?

9 A. No.

10 Q. That was at the previous facility?

11 A. Yes, ma'am. The Wellbutrin was someone
12 else's, and not provided by Ms. Alvarado.

13 Q. Okay. And so are you also aware that
14 there was more than one inmate in the facility in
15 Lovington who was concerned about your activities
16 and how it might compromise safety?

17 A. Who is that?

18 Q. Are you aware that there was more than one
19 inmate --

20 A. Yeah.

21 Q. -- who reported these activities?

22 A. Oh, yes, ma'am.

23 Q. Okay. And are you aware of the allegation
24 that on December 5th, sometime between noon and 5:00
25 p.m., you walked directly into the control center

1 and you received a cellphone and charger from
2 Ms. Alvarado?

3 A. I don't know the exact date that I had
4 received it, but...

5 Q. Does that sound familiar?

6 A. That sounds familiar.

7 Q. Do you think that's right?

8 A. Could be.

9 Q. And are you also aware that it's alleged
10 that you took that cellphone and charger and you
11 wrapped in it a towel and you brought it back to
12 your cell?

13 A. Oh, yes, ma'am.

14 Q. And then on December 21, 2017, early in
15 the afternoon, Ms. Alvarado opened up the rec door
16 and let you walk into the control room again and had
17 sex with you?

18 A. In the multipurpose room, yes.

19 Q. Just like you told me about. Are you also
20 aware of the allegation that you had Suboxone and
21 tobacco, which you kept in your underwear; and
22 syringes, which you kept in your anal cavity?

23 A. No, ma'am, I didn't have no -- I was in no
24 possession of syringes, where I kept them in my anal
25 cavity.

1 Q. You haven't admitted to that?

2 A. No. I didn't have the syringes.

3 Q. You know, do you not, that inmates who
4 were housed with you were concerned about these
5 kinds of activities and the fact that these
6 activities might put them in danger?

7 A. That's what they say. But yes, I am aware
8 of that.

9 Q. So the jig was up, and on January 5, that
10 phone and the drugs and the letter were all seized;
11 right?

12 A. Yes, ma'am.

13 Q. And after that, did you make any effort to
14 reach out to Special Agent Acee or somebody else to
15 report what had happened?

16 A. At that time, no.

17 Q. Okay. They heard from the police -- or
18 you don't know?

19 A. They must have heard from the police, yes,
20 ma'am.

21 Q. And so then about two and a half weeks
22 later you testified that you did sit down with Mr.
23 Beck. That was the January 22, 2018, interview and
24 you didn't fess up at that point; you didn't tell
25 them?

1 A. No, ma'am, I did not fess up at that
2 point.

3 Q. You said, "No, that wasn't my phone. No,
4 I'm not having sex with Ms. Alvarado." It's not
5 true?

6 A. Yes, I didn't fess up at that time.

7 Q. And then just over a week later, a week
8 and a half later, you meet with Mr. Beck?

9 A. Yes.

10 Q. And you tell him it was your phone?

11 A. Yes. I had disclosed it to my attorneys
12 and it was best that we disclose it to Mr. Beck a
13 short time later.

14 Q. Because you knew that you would be asked
15 about it in this trial?

16 A. Probably. But it was weighing heavy on
17 me. I just needed to let it out, to let it be
18 known, to tell the truth about it and not lie about
19 it. Because eventually the lies were going to get
20 me caught up and in trouble. So telling the truth
21 was the best thing for me to do, to let the
22 Government know that I was doing these activities.
23 I was in possession of this phone. And that's it.
24 Just tell the truth.

25 Q. It's hard to keep track of all the

1 stories. It's easier if you just have one story;
2 right?

3 A. The truth.

4 Q. And so you finally told them the truth
5 about the phone and about the sexual relationship
6 because at that point you no longer had to protect
7 Ms. Alvarado; she'd already been fired; right?

8 A. Yes.

9 Q. And you told Mr. Beck that the reason you
10 hadn't told the truth a week and a half prior was
11 that you wanted to protect Ms. Alvarado?

12 A. Yeah, I wanted to protect her.

13 Q. That was more important than telling the
14 truth in this case; right?

15 A. Her protection; her protection was very
16 important to me, so I wanted to protect her and keep
17 her out of this. But eventually I had to come clean
18 with it.

19 Q. Eventually the Government came to be in
20 possession of this information and they confronted
21 you with it and you had no choice but to tell them
22 the truth?

23 A. I told them the truth.

24 Q. But before that, it was more important to
25 you to preserve your relationship with Ms. Alvarado

1 than it was to tell the truth?

2 A. I told the truth. But at the same time, I
3 wanted to preserve my relationship with
4 Ms. Alvarado.

5 Q. Okay. I think you testified on direct
6 that you received some benefits for your work for
7 the Government in this case; is that right?

8 A. Yes, ma'am.

9 Q. You received, I think, just over \$1,100;
10 is that right?

11 A. Yes.

12 Q. Over a significant period of time. You've
13 received some extra calls?

14 A. No, ma'am.

15 Q. Have you had any better conditions since
16 you started working for the Government?

17 A. No. I'm in segregation. I don't get
18 nothing extra.

19 Q. Okay. And the biggest thing, the most
20 important thing to you, that you've received, is a
21 promise that if you assist the Government in this
22 case and testify against the men in this room, that
23 you can get a greatly reduced sentence; isn't that
24 right?

25 A. I wasn't promised anything by the

1 Government. The Government just told me to tell the
2 truth, and that's it.

3 Q. Well, let's put up Government's Exhibit
4 681. This is, I think, the document that you
5 recognize as the addendum to your agreement with the
6 Government; right?

7 A. Yeah, it looks like it.

8 Q. This is what's otherwise known as the 5K?

9 A. Yes, ma'am.

10 Q. This is where the money is. And you
11 remember the agreement right here, "The defendant
12 agrees to testify truthfully if called as a
13 witness"; is that right?

14 A. Yes, ma'am.

15 Q. Do you know who decides if you're
16 testifying truthfully?

17 A. Who is that?

18 Q. It's not you; right?

19 A. No.

20 Q. It's this jury?

21 A. The jury.

22 Q. That's right.

23 A. Yes.

24 Q. And so it's your testimony today that you
25 were never promised anything. You think, sitting

1 here today, that you could be -- that you're facing
2 life; the Government ain't going to give you any
3 better deal?

4 A. That's what I signed for.

5 Q. Okay. Let's listen to what's been marked
6 as Defense Z12.

7 MR. BECK: Objection, Your Honor. May we
8 approach?

9 THE COURT: You may.

10 (The following proceedings were held at
11 the bench.)

12 THE COURT: This has already been
13 admitted?

14 MS. FOX-YOUNG: It hasn't. And I was
15 going to impeach him.

16 THE COURT: Well, what is it?

17 MS. FOX-YOUNG: The same way that I used
18 it for David Calbert. It's a call where he says
19 it's not -- he's not been promised, and he says he's
20 been promised, and zero to 10 years, and great
21 detail about --

22 THE COURT: It's not coming into evidence.
23 It's just being used to impeach, Z12.

24 MS. FOX-YOUNG: I won't move to admit
25 based upon the Court's prior rulings.

1 MR. BECK: I didn't know what the
2 impeachment was, but if he promised and he just said
3 it wasn't, it's --

4 THE COURT: What is he going to say?

5 MS. FOX-YOUNG: Let me get my notes, Your
6 Honor.

7 He's going to say he's been told he's not
8 doing a life sentence anymore; that he's given a
9 second chance, and that he signed an open plea, and
10 it's for zero to 10. It's totally contrary to this
11 testimony that he's expecting a life sentence and
12 has no expectation of anything else.

13 MR. BECK: Well, I think the testimony is
14 whether he was promised anything, and he says he
15 isn't promised anything. I think to impeach him
16 with those statements, you'd have to go over those
17 statements first for proper impeachment.

18 MS. FOX-YOUNG: It still impeaches his
19 direct testimony, Your Honor. He says he's been
20 promised by his lawyers. His lawyer told him that's
21 what he's getting.

22 THE COURT: I think it's close enough to
23 impeachment that I'll allow it to be played.

24 (The following proceedings were held in
25 open court.)

1 THE COURT: Ms. Fox-Young.

2 MS. FOX-YOUNG: Thank you, Your Honor.

3 So let's go ahead and play what's been
4 marked as Defense Z12.

5 (Tape played.)

6 BY MS. FOX-YOUNG:

7 Q. Now, did that say this is a prepaid call
8 from JR?

9 A. Yes, ma'am.

10 Q. Is that you?

11 A. Yes, ma'am.

12 Q. Go on.

13 (Tape played.)

14 Q. Is that you on the phone?

15 A. I'm listening.

16 Q. Okay. And do you know who you're talking
17 to?

18 A. I don't know at this time.

19 Q. Okay. Go on.

20 (Tape played.)

21 Q. Do you know who you're talking to?

22 A. I think it's my wife. Just giving her
23 some type of hope.

24 Q. I just asked if you knew who you were
25 talking to.

1 A. I'm sorry. Yes.

2 Q. What is her name?

3 A. Terry Montoya.

4 Q. Are you still married to Ms. Montoya?

5 A. No.

6 Q. And I'll represent to you that this call
7 was from February 8, 2017.

8 You can go on.

9 (Tape played.)

10 Q. All right, Mr. Montoya.

11 A. Yes.

12 Q. So in this call, you're not even talking
13 about a life sentence; right?

14 A. No, ma'am.

15 Q. You say --

16 A. Yeah.

17 Q. -- "Zero to 10, and I'm not going to get
18 the whole 10." You told your wife that?

19 A. I'm telling my wife that because I just
20 got to give her something to be hopeful for at the
21 end. I didn't want to disclose to her that I signed
22 for life, so I made it -- I softened it up a little
23 bit.

24 Q. So you lied to her?

25 A. I lied to her, you know.

1 Q. And you told her, did you not, that the
2 lawyers told you that you're not going to do a life
3 sentence anymore?

4 A. I told her that.

5 Q. That's not true?

6 A. Well, I know what I signed for, so I'm
7 just telling her that.

8 Q. You just pulled this zero to 10 out of
9 thin air?

10 A. I just pulled it out on Bluetooth.

11 Q. Now, that was February 8, 2017. As time
12 went on, you started to think you were going to get
13 an even better deal, or you represented it, didn't
14 you?

15 A. I might have said it to -- like I said, to
16 give them some type of hope for us to stay together
17 and prolong my relationship with my wife.

18 Q. So after saying that you'd been promised
19 zero to 10 --

20 A. Which I wasn't.

21 Q. And you know that the folks at this table,
22 if you assist in this case, in their eyes, can file
23 a motion and ask the Court to reduce your time?

24 A. Yes.

25 Q. And you talked to them about that?

1 A. They never gave me any type of number. I
2 just threw that out there. They never told me.

3 Q. And you talked to Special Agent Acee about
4 that?

5 A. I don't recall having a conversation with
6 Acee about any type of duration.

7 Q. Okay. You don't recall. So you told your
8 family zero to 10. Now, do you recall, about a week
9 and a half later, saying the deal was even better
10 than that based upon what your lawyers are telling
11 you?

12 A. I don't know. I'd have to see.

13 Q. You don't remember?

14 A. We'd have to play it.

15 Q. Let's listen to Z11 and refresh your
16 memory on that.

17 A. Yes, ma'am.

18 (Tape played.)

19 Q. All right, Mr. Montoya?

20 A. Yes, ma'am.

21 Q. Do you remember having that phone call?

22 A. I'm hearing it now. I don't remember it,
23 but obviously I made the call.

24 Q. That's you on the call?

25 A. Yes, ma'am.

1 Q. And that call was from February 17, 2017.
2 And you remember -- you entered a plea agreement on
3 January 27, 2017.

4 A. Okay.

5 Q. If you don't remember, I can show you the
6 plea agreement, but I'll represent to you that's
7 when it was. Would you like to see it?

8 A. No, ma'am. I trust you.

9 Q. All right.

10 A. It's okay.

11 Q. So about three weeks later you had this
12 phone call. Who were you talking to in this call?

13 A. I didn't hear their voices, so I'm not
14 exactly too sure, ma'am.

15 Q. You don't know who that was on the phone?

16 A. No.

17 Q. That wasn't Terry?

18 A. Could have been. I didn't hear the voice.
19 It could have been my mom, my grandma, or my auntie.
20 I'm not exactly sure, ma'am.

21 Q. Somebody in your family?

22 A. More than likely, yes, ma'am.

23 Q. And you told this person that when you get
24 out, it's going to spread like wildfire. What did
25 you mean by that?

1 A. Oh, just like -- when I said I don't care
2 what people think about me being a cooperator, me
3 testifying against these guys. So I'm, like, I
4 don't care what anyone thinks. When I win -- and if
5 I get out, it will spread like wildfire. Like, hey,
6 he's out, he got out. Because people didn't expect
7 me --

8 Q. And Mr. Montoya, you said you were going
9 to hit the projects. Is that the projects in
10 Albuquerque?

11 A. I don't know why I said that. I guess it
12 must have been. I'm not sure.

13 Q. You don't know why you said it?

14 A. No.

15 Q. Hit the projects. Then you talked about
16 your lawyer coming to see you and saying at the end
17 of all this -- first of all, your lawyer went over
18 the sentencing guidelines with you; right?

19 A. At some point we probably did, yes, ma'am.

20 Q. That's what you said in this call?

21 A. At that time I probably was just saying
22 that. We probably didn't go over no guidelines,
23 ma'am.

24 Q. You don't think that was true?

25 A. No. I was probably saying that to whoever

1 I was calling. Just like I said, it was to give
2 these people hope that I'm going home.

3 Q. So you said, "We went over the sentencing
4 guidelines." And your sentencing guidelines are
5 what helps determine how much time you would do in
6 the case that you weren't a Government witness;
7 right?

8 A. Yes.

9 Q. And that's the life sentence?

10 A. Signed for life, yes.

11 Q. For murdering Javier Molina?

12 A. Yes. Yes, ma'am.

13 Q. And so you said you talked about the
14 sentencing guidelines, but then your lawyers
15 reassured you that a lot of people were going to
16 come talk for you, on your behalf, including people
17 from the Government; right?

18 A. I said that.

19 Q. Who did they tell you was going to talk
20 for you on behalf of the Government?

21 A. They didn't say anybody would come talk
22 for me. I just said that.

23 Q. This was all made up?

24 A. All made up.

25 Q. And when you said "we" are going to ask

1 for time served for you, that didn't happen either?

2 A. No.

3 Q. So what was represented to you by your
4 lawyer about what the Government was going to say on
5 your behalf? Nothing?

6 A. They haven't told me anything.

7 Q. Okay. And you just don't really remember
8 making that call?

9 A. Well, I know I made the call. I just
10 don't remember the conversation. Like I said, I was
11 being a little spontaneous, a little bit
12 overexaggerated with what I was saying, and just to
13 give my family and my wife and my mother hope that I
14 will touch down, I will go home one of these days.
15 It's all bad news every time.

16 Q. Your wife and your mother and your auntie
17 are pretty important to you?

18 A. Yes, ma'am.

19 Q. As important as anybody in the world?

20 A. My family, yes.

21 Q. And you're telling this jury that you lied
22 to them about how much time you were expecting to
23 serve?

24 A. Well, if it was my wife, then, yeah, I
25 told her a white lie to her, yes, ma'am.

1 Q. Mr. Montoya?

2 A. Yes, ma'am.

3 Q. Let's shift gears and talk a little bit
4 about what was going on with you in March of 2014.

5 A. Okay, ma'am.

6 Q. You were at Southern New Mexico
7 Correctional Facility?

8 A. Yes.

9 Q. Do you remember when you arrived at SNMCF?

10 A. I do.

11 Q. Can you tell me when that was?

12 A. October of 2010.

13 Q. So you'd been there for a substantial
14 period of time?

15 A. Yes.

16 Q. Did you know Mr. Rudy Perez?

17 A. No, I did not.

18 Q. Were you in blue pod with him?

19 A. Oh, yeah. But yes, I met him in blue pod.

20 Q. Okay. You met him once you were there at
21 Southern?

22 A. Oh, yes. I didn't know him before.

23 Q. He arrived in late 2013; right?

24 A. I'm not sure.

25 Q. You remember that when he arrived, he was

1 pretty sick?

2 A. Rudy was sick, yes.

3 Q. Yeah. And you didn't see a lot of him?

4 A. No, he was in his room a lot. He was in
5 the room a lot.

6 Q. And he had a walker that he had to use to
7 get around; right?

8 A. Excuse me?

9 Q. He had a walker assigned to him that he
10 had to use when he wanted to get around; right?

11 A. Yes, ma'am, he did.

12 Q. Now, sometime -- I think it was your
13 testimony that on March 7 you learned about the
14 possibility that something was going to go down
15 involving Javier Molina?

16 A. Yes. Yes, ma'am.

17 Q. Now, you knew something about that before
18 March 7, didn't you?

19 A. I did not know nothing.

20 Q. Did you ever make a call with Mario
21 Rodriguez to Lupe Urquizo's brother asking about
22 hitting Javier Molina?

23 A. No, I did not make a call.

24 Q. You never made that call?

25 A. With Mario Rodriguez and Lupe? No, I did

1 not.

2 Q. Have you talked to Mario Rodriguez about
3 that lately?

4 A. No.

5 Q. Have you talked to Lupe Urquizo about that
6 lately?

7 A. No.

8 Q. So you have no recollection of ever making
9 a call to Lupe Urquizo's brother asking, reminding
10 him that you guys wanted to hit Javier Molina?

11 A. No, ma'am.

12 Q. No recollection. Okay.

13 Now, then, you did testify that you
14 learned -- that you had a conversation about a
15 tattoo that you wanted to get; right?

16 A. Yes.

17 Q. And that was on March 7?

18 A. It was before that.

19 Q. Like how many days before?

20 A. Are you talking about the conversation
21 that I had with Daniel Sanchez?

22 Q. Well, I don't know who all you talked to,
23 but you said something about wanting to get a tattoo
24 and learning that you couldn't; right?

25 A. Yes, ma'am.

1 Q. And when was that?

2 A. Maybe a couple weeks or so before the
3 murder.

4 Q. And you'd been having kind of a rough time
5 with Mario Rodriguez around that time, too, hadn't
6 you?

7 A. I don't remember having a hard time with
8 him. I know he wasn't my favorite person to be
9 around. But as far as I know, we were cordial with
10 one another.

11 Q. You weren't his favorite person to be
12 around?

13 A. I'm not sure.

14 Q. Does Mario Rodriguez have a reputation?

15 A. I'm pretty sure he does.

16 Q. How would you describe it?

17 A. Annoying, aggressive.

18 Q. Aggressive?

19 A. Probably, yeah.

20 Q. Kind of unpredictable?

21 A. Oh, yes. Yes, ma'am.

22 Q. Crazy?

23 A. Unpredictable.

24 Q. Fierce?

25 A. Unpredictable sounds about right.

1 Q. Scary?

2 A. Yeah.

3 Q. Were you scared of him on March 7, 2014?

4 A. Probably, yes.

5 Q. You don't remember?

6 A. Probably.

7 Q. And so in the weeks leading up to Javier
8 Molina's death, do you recall sort of not being in
9 very good favor with the SNM?

10 A. I thought I was in pretty good favor with
11 the SNM.

12 Q. Other people thought you weren't?

13 A. Other people thought I wasn't. But I
14 thought I was in good terms with them. But I guess
15 I wasn't.

16 Q. People like Mario Rodriguez thought you
17 weren't?

18 A. Yeah, he thought I was not.

19 Q. What happened -- what happens to people if
20 they're not in good favor with the SNM, if they run
21 into somebody like Mario Rodriguez?

22 A. Well, whoever is not in favor with the SNM
23 either gets moved on or gets hit.

24 Q. And so on March 7, 2014, I think you
25 testified that you had a conversation with Mario

1 Rodriguez in your cell?

2 A. Yes, ma'am.

3 Q. And that's when he brought you a big piece
4 of metal to use to kill Javier Molina?

5 A. Yes, he did.

6 Q. And he told you you were going to do it?

7 A. Yes, he told me I was going to do it.

8 Q. Do you recall, when he came in, what you
9 believed might happen when you first saw him in your
10 cell?

11 A. I didn't know what was going to happen.

12 Q. And let me just tell you -- backing up a
13 couple of weeks --

14 A. Okay.

15 Q. -- that Mr. Urquizo did testify in court
16 that you called his brother in order to ask about
17 permission to hit Javier Molina. But you don't
18 remember that?

19 A. It wasn't me calling his brother at all to
20 hit Javier, no. I do not remember that at all.

21 Q. To ask for paperwork?

22 A. No.

23 Q. That wasn't you?

24 A. No, it wasn't me.

25 Q. Mr. Urquizo was wrong?

1 A. Yeah, he was wrong. I didn't call his
2 brother or anyone.

3 Q. Okay. So Mr. Rodriguez, Mario Rodriguez,
4 comes into your cell, and in that moment when he
5 came in with that piece of metal, did you think he
6 was there for you?

7 A. I don't know. I threw up my hands, like,
8 I'm not armed, so what's going on, what's up? And
9 that's when he and I started conversing with one
10 another about what was to happen.

11 Q. Okay. And that's when you started to
12 ready yourself in a very short time to go hit Javier
13 Molina?

14 A. What do you mean, ready myself? Prepare
15 myself mentally?

16 Q. Yeah.

17 A. I guess, because that's what I had to do.

18 Q. Did Mr. Rodriguez threaten you?

19 A. No, he didn't threaten me.

20 Q. But it was your perception, when he came
21 in with that metal, that it might be for you?

22 A. I didn't know what could have happened.
23 So it could have been for me. I just wasn't sure.

24 Q. And so on direct you talked about the
25 events that followed, and how it was that you ended

1 up in Javier Molina's cell after Mario Rodriguez
2 waved you in; right?

3 A. Yes, ma'am.

4 Q. He waved you and Mr. Armenta in after Mr.
5 Martinez choked Javier Molina out?

6 A. Yes, ma'am.

7 Q. And you testified that Mario Rodriguez
8 actually held Javier Molina's hands down so he
9 couldn't help himself?

10 A. Yes, ma'am.

11 Q. You watched that?

12 A. I watched it from where I was positioned,
13 yes, ma'am.

14 Q. And then seconds later you and Mr. Armenta
15 went into the cell and proceeded to stab Mr. Molina?

16 A. We did.

17 Q. And how many times did you personally stab
18 Mr. Molina?

19 A. Maybe half. Maybe half. I took part in
20 it. I wasn't counting how many times I stabbed him.

21 Q. Do you know he was stabbed over 40 times?
22 So you're saying split between you?

23 A. Twenty between us.

24 Q. Okay. And did you see Mario Rodriguez
25 stab him at any point?

1 A. No, he didn't.

2 Q. You didn't see that happen?

3 A. Because he didn't.

4 Q. And so you proceeded to stab Mr. Molina.

5 And do you know if you personally stabbed him in the
6 heart?

7 A. I do not know that.

8 Q. You just stabbed him as close to the heart
9 as you could get?

10 A. It was in his chest area. I don't know if
11 it was myself or someone else. Jerry Armenta might
12 have stabbed him in the heart. I don't know who it
13 was. We both were doing it.

14 Q. You know, sitting here today, he was
15 stabbed in the heart?

16 A. I know that today, yes, ma'am.

17 Q. And so then, at some point, Mr. Molina, I
18 think you said -- he came charging out; is that
19 right?

20 A. He gained consciousness, and he came
21 charging out of his room, yes, ma'am.

22 Q. And at that time, Mr. Rodriguez was
23 watching the events progress; right?

24 A. Yes, he was.

25 Q. And where was Mario Rodriguez watching

1 from?

2 A. He was watching from outside the cell by
3 the guardrail.

4 Q. Okay. And he was yelling at you guys to
5 finish the job?

6 A. He was, ma'am.

7 Q. And so you did?

8 A. We were ordered to do it.

9 Q. And once you were done, you threw your
10 shank up to Mario?

11 A. Yes, ma'am, I did.

12 Q. And he disposed of it for you?

13 A. Yes, ma'am.

14 Q. Of course, it was soon recovered, and it
15 soon became clear; that all this was on video?

16 A. Absolutely.

17 Q. Okay. And then the next day you talked to
18 folks at the prison about the murder, did you not?

19 A. I think so.

20 Q. You don't remember?

21 A. March --

22 Q. March 8.

23 A. The investigators?

24 Q. Did you talk to anybody about the -- at
25 the correctional facility about the murder on March

1 8?

2 A. I don't remember talking to nobody, about
3 the murder, anyhow, on the 8th of March.

4 Q. Do you remember talking to Mr. Holguin?

5 A. Oh, yes, ma'am.

6 Q. And how did that interview come to take
7 place?

8 A. I called him in.

9 Q. So you asked for him to come talk to you?

10 A. Yes.

11 Q. And at that point you knew that you were
12 caught on video; right?

13 A. I wasn't sure. I wasn't sure.

14 Q. You thought you were?

15 A. Yes, ma'am.

16 Q. And so from that first moment, it was time
17 to find a way out of this deal; right? That ticket
18 to freedom. You knew they had you.

19 A. I didn't know. I didn't know how it was
20 at that time, ma'am. I called them in. I don't
21 remember talking to them about the murder.

22 Q. You remember calling Ernie Holguin in to
23 talk to you; right?

24 A. I do, yes.

25 Q. And do you remember talking to him about

1 where shanks were located in the blue pod?

2 A. I don't recall that.

3 Q. Would it refresh your memory if I showed
4 you a report generated by Mr. Holguin?

5 A. Yes, you can.

6 MS. FOX-YOUNG: Your Honor, may I
7 approach?

8 THE COURT: You may.

9 BY MS. FOX-YOUNG:

10 Q. All right. Mr. Montoya, I'm showing you
11 this report. Do you see where it says this is for
12 an interview on March 8?

13 A. Yes, ma'am.

14 Q. Okay.

15 A. Yes, ma'am.

16 Q. I'm just going to ask you to look -- and
17 take as much time as you need. Look at this second
18 page and see the areas I've noted.

19 A. Yes, ma'am.

20 Q. Let me know when you're done.

21 A. I remember talking to Mr. Holguin about
22 those subjects.

23 Q. Okay.

24 A. Yes, ma'am.

25 Q. So Mr. Montoya, having looked at this

1 report, you now remember talking to Mr. Holguin
2 about where there were shanks in blue pod?

3 A. Yes, ma'am.

4 Q. Do you remember telling him about Lupe
5 Urquizo having a shank?

6 A. I must have told him at that time, yes.

7 Q. Yeah.

8 A. Yeah.

9 Q. And you remember telling him that it would
10 put somebody in danger to give up the location of
11 their shanks, right, if they were found?

12 A. Yes.

13 Q. And why is that?

14 A. They could potentially be used on them.
15 Somebody might get it and, you know, take it for
16 them as their own, and use it on the owner or anyone
17 else in the pod. So everybody kept their shanks
18 hidden and quiet so that they only know where they
19 are.

20 Q. And if someone were to make a report to
21 anybody in the prison about the location of any
22 shanks, they could be killed; right?

23 A. Yes, ma'am. If somebody told where shanks
24 were, then they would be in trouble.

25 Q. With people like Mario Rodriguez?

1 A. Yes, ma'am.

2 Q. And when you talked to Mr. Holguin on the
3 8th you didn't fess up as to your role in the
4 murder; right? You sort of talked around it?

5 A. Yes, ma'am. I didn't talk too much about
6 the murder at all.

7 Q. Actually, I think on that day you did know
8 that they had video, and you did describe what was
9 on the video. Do you remember that?

10 A. I don't recall, ma'am.

11 Q. Okay. So you had a conversation within 24
12 hours of the murder with Corrections Department
13 officials because you knew you had to figure out
14 some way to move forward. You were caught
15 bloody-handed.

16 A. That's fair to say.

17 Q. And when you talked to Mr. Holguin on that
18 day, you didn't say anything about Rudy Perez, did
19 you?

20 A. He didn't cross my mind.

21 Q. Didn't say one word about him?

22 A. Didn't cross my mind.

23 Q. Okay. Subsequently --let's put up
24 Government's Exhibit 756.

25 You testified that this letter that Jerry

1 Armenta sent to you, which was dated January 3,
2 2015, was not your brain child; right? You didn't
3 come up with this idea to do this letter?

4 A. No, I did not.

5 Q. You didn't talk to Mr. Armenta before he
6 drafted it?

7 A. I did not, ma'am. I don't recall.

8 Q. Okay. Could you zoom in.

9 Now, this letter from January 3 of 2015
10 doesn't say anything about Rudy Perez; right? You
11 don't see it anywhere in this letter. I know you
12 didn't write this letter.

13 A. I don't see his name in there, ma'am.

14 Q. Okay. And you arrived at the Penitentiary
15 of New Mexico right around this time, didn't you?

16 A. In Santa Fe, you mean?

17 Q. Yeah, up north.

18 A. North.

19 Q. Just a couple days after this letter is
20 dated; do you remember?

21 A. I must have been transported back. I've
22 been transported a lot in these last four years.

23 I've been on a lot of road trips, ma'am.

24 Q. I know it's a lot to remember.

25 Mr. Montoya?

1 A. Yes, ma'am.

2 Q. I'd like to show you -- would it help you
3 remember if we took a look at -- it's a portion of
4 your location history that shows where you were at
5 particular times in the past in the Corrections
6 Department.

7 A. That would help.

8 Q. Okay. Let's take a look at Defense V21.

9 MS. FOX-YOUNG: Your Honor, I move the
10 admission of V21. I don't think the Government
11 objects.

12 THE COURT: V21?

13 MR. BECK: No objection, Your Honor.

14 THE COURT: All right. How about you, Ms.
15 Jacks? Any objection?

16 MR. JEWKES: No, Your Honor.

17 MS. JACKS: My request was to provide my
18 objections, if there were any, tomorrow morning. At
19 this point, on this exhibit, no, we can go forward.

20 THE COURT: Well, why don't you look at
21 V21? We'll just take it one at a time. We'll take
22 a look at V21. Show it to Ms. Jacks. Take care of
23 the other ones tomorrow.

24 MS. JACKS: No objection.

25 THE COURT: Anybody else?

1 MS. DUNCAN: No, Your Honor.

2 THE COURT: All right. Defendants'

3 Exhibit V21 will be admitted into evidence.

4 (Defendants' Exhibit V21 admitted.)

5 THE COURT: Ms. Fox-Young.

6 MS. FOX-YOUNG: Thank you, Your Honor.

7 BY MS. FOX-YOUNG:

8 Q. Mr. Montoya, have you ever seen a document
9 like this before?

10 A. I don't think so, ma'am.

11 Q. This is a document that the Corrections
12 Department generates that purports to show any
13 particular individual's location at a given time.
14 So this letter that we were looking at for Mr.
15 Armenta was written on January 3, 2015. And I was
16 asking you if that's close to the time that you went
17 to PNM, and it looks to me like you went to PNM
18 right here on January 6, 2015. Do you see that?

19 A. I see that, ma'am.

20 Q. You were in cell Q107?

21 A. Yes.

22 Q. Do you remember that?

23 A. If it reads my location on there, then I
24 was there, ma'am.

25 Q. Okay. Well, do you remember being at PNM

1 in early 2015?

2 A. Yes, ma'am.

3 Q. Okay. Do you remember being there with
4 Mr. Armenta?

5 A. Excuse me?

6 Q. Do you remember being there with Mr.
7 Armenta?

8 A. Oh, yeah. Yes, ma'am.

9 Q. And into the spring, you were there for
10 some months; right?

11 A. Yes, ma'am.

12 Q. And was Mr. Rodriguez also there?

13 A. Everybody that was housed there, yeah,
14 anyone that was involved in the homicide was housed
15 there. They transferred all of us that they
16 thought --

17 Q. And they transferred people who weren't
18 involved, too; right? They transferred everybody
19 that was alleged to be SNM at some point?

20 A. To my knowledge, they transported people
21 that were involved.

22 Q. It's okay if you don't know exactly who
23 was transported.

24 A. No.

25 Q. But you remember being there with Mr.

1 Armenta and Mr. Rodriguez and Mr. Martinez?

2 A. Yes, ma'am. Yes, I do.

3 Q. And you remember talking with them about
4 the murder?

5 A. About our case.

6 Q. About your case?

7 A. The murder? The case?

8 Q. Either one.

9 A. I don't know. We talked about -- yeah, I
10 guess so. Yes.

11 Q. And you talked about Mr. Armenta's letter?

12 A. No.

13 Q. Never talked to him about that?

14 A. Afterwards I must have told him, yeah. I
15 guess, yeah, we did talk about it after it was
16 already written.

17 Q. And you all talked about going to work for
18 the Government?

19 A. Excuse me?

20 Q. You talked about going to work as
21 Government witnesses?

22 A. Oh, no. No.

23 Q. Do you remember whether Billy Cordova was
24 there with you?

25 A. He lived in the next pod over, ma'am. I

1 remember seeing him there, yes.

2 Q. Do you remember seeing Eric Duran there?

3 A. I do, ma'am, yes.

4 Q. And there was talk amongst all of you
5 about the Molina case; right?

6 A. Yeah, of course. That's the hot topic on
7 the yard, you know. Everyone -- a lot of people
8 were involved in it. So that was what we were
9 talking about. That was the thing. Yes, ma'am.

10 Q. And you were talking about the state case?

11 A. The State's case, yes.

12 Q. Because you hadn't been charged yet in
13 this case?

14 A. Not yet.

15 Q. The feds hadn't picked it up yet?

16 A. No, ma'am.

17 Q. Do you remember any rumors at that time
18 about Rudy Perez talking to the Government?

19 A. I don't remember.

20 MR. BECK: Your Honor, objection. The
21 question calls for hearsay.

22 THE COURT: Well, if you're just asking
23 for Rudy again, I think you're going to have to lay
24 a foundation, like we did with the --

25 MS. FOX-YOUNG: I think he said he doesn't

1 remember. I'll move on.

2 BY MS. FOX-YOUNG:

3 Q. So at that time, you said you and Mr.
4 Armenta and Mr. Martinez and Mr. Rodriguez were all
5 in the same pod; right?

6 A. We were all in different pods. I'm pretty
7 sure at one point a couple of us were housed in the
8 same pod.

9 Q. But you were able to communicate with one
10 another. How was that?

11 A. The gang unit there at the prison houses
12 all the SNM Gang members together, regardless if
13 they're co-defendants or not. We're housed
14 together. That's how they house the SNM.

15 Q. So you were able to talk to Mr. Billy
16 Cordova, even though you weren't next door to him?

17 A. If I seen him out in the yard, that's the
18 only way we could communicate, in the yard. So if I
19 seen him out there, I would communicate with him.

20 Q. And you were able to talk to Mr. Eric
21 Duran?

22 A. If I seen him out in the yard.

23 Q. You remember talking to them during that
24 time period? I know it's been a while.

25 A. I'm pretty sure if I crossed paths with

1 them, I'm pretty sure we talked.

2 Q. Okay. And sometime that summer things are
3 sort of boiling up in the state case; right? It was
4 going to be set for trial?

5 A. Yes, ma'am, for the fall.

6 Q. I'm sorry. That fall. Do you remember
7 the next time you talked to any Government agents?

8 A. No.

9 Q. And I mean Corrections Department, for
10 example, or police or prosecutors about the Molina
11 homicide?

12 A. They had approached me.

13 Q. Who had approached you?

14 A. The STIU.

15 Q. Okay. Did you talk to them?

16 A. No.

17 Q. So do you remember the next time that you
18 did talk to law enforcement or Corrections
19 Department officials about the Molina homicide? I
20 know you talked to them the day after the homicide.

21 A. Yeah.

22 Q. Do you remember the next time?

23 A. I'm not sure, ma'am.

24 Q. Do you remember talking to State Police in
25 August of 2016 -- I'm sorry, it wasn't August 2016.

1 Do you remember talking to State Police at some
2 later date with Sergeant Larcher and Agent
3 Palomares?

4 A. I remember that now, yes.

5 Q. When did that conversation happen?

6 A. In March, I think.

7 Q. Of 2015. It had to be, right, because you
8 hadn't yet been charged in the federal case.

9 A. It might have happened in March of 2014,
10 ma'am. I'm not --

11 Q. In any event, you talked to Sergeant
12 Larcher and you talked to Agent Palomares, and do
13 you remember your discussions with them?

14 A. I do.

15 Q. Do you remember you were trying
16 desperately to get a deal; right?

17 A. I was fishing for one. Yes, I was.

18 Q. So did you ask to meet with them?

19 A. I did not ask to meet with them, no.

20 Q. They came to see you?

21 A. Yes, ma'am.

22 Q. Where did that interview happen?

23 A. This happened at Southern New Mexico, here
24 in Las Cruces.

25 Q. And they came to see you, and you learned

1 at that time that they had the video; right?

2 A. I knew that they had a video. I just
3 didn't -- yes.

4 Q. That the homicide was on video? You
5 learned that?

6 A. Yes.

7 Q. And discussed that?

8 A. We didn't discuss it, no. I didn't
9 discuss the case with them at all.

10 Q. You didn't discuss the case with them at
11 all?

12 A. I found out there was a video, is what I
13 meant. I'm sorry. Probably didn't go in too much
14 detail about the events of that day.

15 Q. But you were "fishing"; those were your
16 words?

17 A. Yeah.

18 Q. Okay. So you talked to them and you
19 learned that they had you cold, and they had Mario
20 Rodriguez cold, and they had Timothy Martinez cold;
21 right?

22 A. They had us on video, yes.

23 Q. And they had Jerry Armenta cold?

24 A. Yes, ma'am.

25 Q. They knew all that. So you were fishing,

1 and you're trying to figure out what else you could
2 give them to get yourself a deal; right?

3 A. Yes.

4 Q. And on that day you did give them some
5 detail, didn't you?

6 A. I might have.

7 Q. You did talk about other people who were
8 involved; right?

9 A. I might have, ma'am.

10 Q. But you didn't tell them one word about
11 Rudy Perez, did you?

12 A. At that time he didn't come to mind. The
13 shank issue was not a hot topic at that time. They
14 weren't --

15 Q. You didn't care where the shanks came
16 from; right?

17 A. I didn't care, no.

18 Q. That didn't matter to you?

19 A. No, ma'am, I didn't care where they came
20 from.

21 Q. And so you talked about people who you
22 thought were involved because you wanted to curry
23 favor and try to give the Government something that
24 they didn't already have, right, to get yourself a
25 deal?

1 A. I talked to people that were involved.

2 Q. I'm sorry, was that a yes?

3 A. I talked to people -- to them about people
4 that were involved.

5 Q. Right. Because you were trying to get a
6 deal from State Police, and you wanted them to go to
7 the district attorney and try to put something
8 together for you; right?

9 A. I might have been trying to gain favor.

10 Q. Okay. But you didn't say anything about
11 Rudy Perez, and you didn't care where the shanks
12 came from?

13 A. I didn't say anything about Rudy.

14 Q. And then at some point later, you did end
15 up charged in this case; right?

16 A. Yes, ma'am.

17 Q. And do you remember when the first time
18 was that you talked to any federal agents?

19 A. It was the following year. I think
20 January of 2017, somewhere around there.

21 Q. Okay. And do you remember when you were
22 charged in this case?

23 A. December 2015.

24 Q. Okay. And so sometime between December
25 2015 and January 2017 you were housed in Estancia,

1 at the Torrance County Detention Center?

2 A. Yes, ma'am.

3 Q. Right. And you left -- do you remember
4 when you left the Torrance County Detention Center?
5 You told me earlier.

6 A. October.

7 Q. Okay. And where did you go?

8 A. PNM, Penitentiary of New Mexico, up in
9 Santa Fe.

10 Q. So October 2016 you left and you went back
11 to Santa Fe?

12 A. Yes, ma'am.

13 Q. And after that time you had some
14 conversations with Government agents; right?

15 A. It wasn't there at the facility, no. It
16 was the following year.

17 Q. Well, you said in January. So you got
18 moved in October 2016. You got moved away from
19 everybody who was at Torrance County?

20 A. Yes.

21 Q. You went to Santa Fe. And then you talked
22 to Government agents in January of 2017; right?

23 A. Yes, ma'am.

24 Q. And do you remember who you met with?

25 A. Yes, I do.

1 Q. Who did you meet with?

2 A. Special Agent Bryan Acee.

3 Q. Um-hum.

4 A. And the Government team right there.

5 Q. Ms. Armijo, Mr. Castellano, and Mr. Beck?

6 A. That would be right, yes.

7 Q. And at that time you provided some
8 additional information about the Molina case; right?

9 A. I disclosed everything I know about the
10 Molina case, right.

11 Q. And you disclosed a whole bunch of other
12 stuff; right? Whatever you could give them.

13 A. Things that I knew of that the SNM had
14 done.

15 Q. Do you remember how long that interview
16 was?

17 A. I don't know. An hour, hour and a half,
18 ma'am.

19 Q. Maybe an hour and a half?

20 A. Yeah.

21 Q. And with regard to the Molina case, do you
22 remember specifically what you said?

23 A. Pretty much what I'm saying in my
24 testimony today.

25 Q. Do you remember talking about the penalty

1 that individuals might face for talking to the
2 Government?

3 A. Yes.

4 Q. And what was that?

5 A. Well, penalty of, you know, being killed.

6 Q. And would that penalty apply even if there
7 were just rumors that you were talking to the
8 Government and you weren't really?

9 A. Yeah. If someone believes that, you know,
10 you're ratting or talking to the Government, giving
11 up information, and if that's their truth, they're
12 going to move on you and something bad could happen.

13 Q. And you remember at that time you talked
14 about where the shanks -- where you thought the
15 shanks came from; right?

16 A. It might have came up, ma'am.

17 Q. And that you had heard from Mario
18 Rodriguez about where they came from; right?

19 A. Yes, ma'am.

20 Q. What had you heard?

21 A. I asked Mario where he got the shanks, and
22 he told me he got them from Rudy Perez' walker.

23 Q. And that was the sum total of what you
24 told the Government in January 2017 about Rudy Perez
25 and any potential involvement in this case; right?

1 A. I figured it would come up later.

2 Q. Just answer my question, Mr. Montoya.

3 A. Yeah.

4 Q. So at that time you described -- well, did
5 you tell the Government whether or not you thought
6 Rudy Perez was scared when Mario Rodriguez took
7 those pieces?

8 A. I don't remember saying that he was
9 scared.

10 Q. Do you remember saying that he had some
11 concerns about whether he was --

12 A. The target?

13 Q. Yeah.

14 A. Yes.

15 Q. You told the Government about that?

16 A. Yeah, because that's the way it was told
17 to me by Mario.

18 Q. Okay. So you believed then that Mario
19 Rodriguez had gone in to Rudy Perez' cell and
20 himself taken those pieces and scared Rudy Perez,
21 and that's what you told the Government?

22 A. That's what I told them.

23 Q. And that was about three months after you
24 left the Torrance County Detention Center. So it
25 would have been about three months at that time

1 since you'd seen Rudy Perez; is that right?

2 A. Yes.

3 Q. And in exchange for all this information
4 on January 20, 2017, did you get any promises from
5 the Government? Did you get any benefits? Did they
6 agree to move you?

7 A. Move me? I was moved facilities already.
8 But other than giving me any type of promises, I
9 don't recall them promising me anything.

10 Q. Okay. And so at that time you had to keep
11 working. And did you talk to the Government again
12 before you entered your plea agreement a week later?

13 A. I might have.

14 Q. Maybe on the day of your plea agreement;
15 right?

16 A. Yes. Do you mean, like, to give a debrief
17 or something? I don't remember that.

18 Q. Okay. But you remember coming into court
19 and pleading guilty to the murder of Javier Molina?

20 A. Yes, ma'am.

21 Q. And you remember that there were certain
22 facts that you had to say were true --

23 A. Yes, ma'am.

24 Q. -- in the body of that agreement; right?

25 A. Yes.

1 Q. And those facts didn't deviate at all from
2 what you had told the Government a week before in
3 your debrief; right?

4 A. No, they didn't waver whatsoever.

5 Q. And so you again told the Government that
6 Mario Rodriguez had taken pieces from Rudy Perez'
7 walker and sharpened them himself and told you
8 that's where they came from; right?

9 A. That's what I said when I pled guilty,
10 ma'am, yes.

11 Q. I can show it to you if you don't
12 remember.

13 A. If it's there, then I said it.

14 Q. That was under oath, and you told this
15 Court that those are the facts upon which your
16 guilty plea was based, in addition to others?

17 A. Yes.

18 Q. And you didn't say anything about Rudy
19 Perez telling you that he volunteered to help on
20 that day; right? You didn't tell the Court that?

21 A. No, ma'am.

22 Q. And that was months after you'd left
23 Torrance County Detention Center, and months since
24 you'd seen Rudy Perez; right?

25 A. Yeah, it was a while.

1 Q. Okay. And then again you met with the
2 Government just before this trial; right?

3 A. Yes.

4 Q. And you talked about meeting with the
5 Government on January 22. You didn't say anything
6 about Rudy Perez in that conversation; right?

7 A. I might have. I don't know. I might
8 have, ma'am.

9 Q. And it was only then, in the days before
10 this trial began, that you realized that you might
11 be able to curry even more favor if you could give
12 the Government something else, something that you
13 hadn't already told them, something else that would
14 implicate somebody further in this case; is that
15 right?

16 A. Such as?

17 Q. And that's when you made up this story
18 about Rudy Perez and what he told about volunteering
19 to help; isn't that right?

20 A. No. I didn't make up any story. It was
21 what Rudy had told me while he were housed at
22 Estancia. So what he told me is -- I told them.

23 Q. So for 15 months you didn't tell the
24 Government that? You're representing to this jury
25 that you learned that in Torrance County Detention

1 Center sometime before October 2016, and you never
2 told the Government? It's not documented in any
3 report. And in the days before this trial, when
4 you're to come sit here and testify and demonstrate
5 to the Government that you deserve a lesser
6 sentence, zero to 10 years, or maybe even time
7 served --

8 A. Yeah.

9 Q. -- that you came up with the story about
10 Rudy Perez; isn't that right?

11 A. No.

12 Q. That's when you told them?

13 A. No.

14 MS. FOX-YOUNG: Your Honor, no further
15 questions.

16 THE COURT: Thank you, Ms. Fox-Young.
17 Anybody else going to cross-examine Mr. Montoya?
18 Mr. Jewkes?

19 MR. JEWKES: Your Honor, may it please the
20 Court.

21 THE COURT: Mr. Jewkes.

22 CROSS-EXAMINATION

23 BY MR. JEWKES:

24 Q. Mr. Montoya, how are you, sir?

25 A. I'm doing well, sir. Thank you.

1 Q. Mr. Montoya, you've been over a lot of
2 ground this afternoon. A few points I want to talk
3 to you about and, I want to go back to March 7,
4 2014.

5 A. Yes, sir.

6 Q. At Southern New Mexico facility. How many
7 of you were actually inside Javier Molina's cell
8 when the assault began?

9 A. There were four of, sir, that were
10 present.

11 Q. And they were, once again, you?

12 A. Myself. Jerry Armenta, Timothy Martinez,
13 and Mario Rodriguez.

14 Q. Mario Rodriguez. Also known as Blue?

15 A. Also known as Blue, yes, sir.

16 Q. And who was the first one of you to lay a
17 hand on Javier Molina?

18 A. It might have been Timothy Martinez, sir.

19 Q. Timothy?

20 A. Yes, sir.

21 Q. Did he stab Mr. Molina or did he strike
22 him?

23 A. He choked him.

24 Q. Choked him?

25 A. Yes.

1 Q. Did he come up behind him, put a choke
2 hold on him?

3 A. Yes, sir. He came up behind him, put a
4 choke hold on him.

5 Q. So he came up behind Javier Molina?

6 A. Yes.

7 Q. Threw an arm around the front of his
8 throat?

9 A. Yes.

10 Q. And what else happened? Who moved in at
11 that time?

12 A. Well, when Timothy Martinez was choking
13 him, Mario was holding his hands. Then Javier lost
14 consciousness. Laid him on the floor, stomped on
15 his head. And then after that, myself and Jerry
16 Armenta moved into the room.

17 Q. Okay.

18 THE COURT: Mr. Jewkes, would this be a
19 good time to call it an evening?

20 MR. JEWKES: Yes, Your Honor.

21 THE COURT: All right.

22 We'll see you at 8:30 in the morning.

23 Thank you for your hard work. See you then. All
24 rise.

25 (The jury left the courtroom.)

1 THE COURT: Mr. Montoya, you're on the
2 stand right now and you're testifying, so don't talk
3 to anybody about your testimony. Okay?

4 THE WITNESS: All right, yes, sir.

5 THE COURT: All right. We will see you in
6 the morning. I appreciate your hard work. Y'all
7 have a good evening.

8 (The Court stood in recess.)
9

10 Tuesday, February 13, 2018

11 (The jury entered the courtroom.)

12 THE COURT: Well, good morning, ladies and
13 gentlemen. I appreciate everybody being back and
14 ready to go and on time. I know we're kind of
15 struggling with some people that are not feeling
16 well, and we'll certainly assist you in getting any
17 medication or anything that you need. So let Ms.
18 Standridge or Ms. Wild know, and we'll try to help
19 you with that.

20 I stopped by Walmart and got my little bag
21 of medicine today, too. I think it's beginning to
22 wear on all of us. And I appreciate everybody
23 hanging in there and trying to get it done and
24 staying and gutting it out. So I appreciate it very
25 much.

1 All right, Mr. Montoya. I'll remind you
2 that you're still under oath.

3 THE WITNESS: Yes, sir.

4 THE COURT: And Mr. Jewkes, if you wish to
5 continue your cross-examination of Mr. Montoya, you
6 may do so at this time.

7 MR. JEWKES: Your Honor, may it please the
8 Court.

9 THE COURT: Mr. Jewkes.

10 JERRY MONTOYA,
11 after having been previously duly sworn under
12 oath, was questioned, and continued testifying
13 as follows:

14 CONTINUED CROSS-EXAMINATION

15 BY MR. JEWKES:

16 Q. Good morning, Mr. Montoya.

17 A. Good morning, sir.

18 Q. Last night we left off, it was March 7,
19 2014, and I believe you told us there were four of
20 you in Javier Molina's cell?

21 A. There was four of us, yes.

22 Q. Sir?

23 A. Yes, four of us inside the cell, yes.

24 Q. And what was the cell number?

25 A. B105.

1 Q. 105. And the four were you, Javier
2 Molina, Timothy Martinez?

3 A. And Jerry Armenta.

4 Q. And Jerry Armenta. All right. Now, was
5 anyone at that time using drugs inside the cell?

6 A. They had went to use drugs. I don't know
7 if they actually used the drugs inside the cell.
8 But they went to use drugs.

9 Q. When you say "they," who is they?

10 A. Three of them: Timothy Martinez, Javier
11 Molina, and Blue, who is Mario Rodriguez. They went
12 in there to use the drugs. I don't know if they
13 used the drugs. But that's what the plan was.

14 Q. Did they go into the cell before you did?

15 A. Yes, sir, they did.

16 Q. Did you see any evidence of drug use
17 inside the cell?

18 A. I didn't go in there to use drugs. I went
19 in there for a whole other reason.

20 Q. Did you see a syringe inside the cell?

21 A. I didn't see a syringe at that time, no,
22 sir. I didn't look around.

23 Q. All right. And you told us that you were
24 the first one to lay a hand on Javier Molina; is
25 that correct?

1 A. Yes, sir. Timothy Martinez was the first
2 one to lay a land on him. That's what I had said.

3 Q. All right. I stand corrected. Tell us
4 exactly what Timothy Martinez did.

5 A. Well, the three went into the room. How I
6 remember it, I'm looking inside the cell, and Javier
7 Molina is hunched over, mixing some Suboxones in the
8 spoon. And while he's mixing the Suboxones, Timothy
9 Martinez comes behind him and swoops him up by the
10 neck.

11 Q. Let me stop you just a minute.

12 A. Yes.

13 Q. You've already established that there was
14 Suboxone inside the cell?

15 A. That's how they got Javier into the cell.

16 Q. Sir?

17 A. That's how they lured him into the room,
18 by drug use.

19 Q. So Javier was actually mixing the drugs?
20 Javier Molina?

21 A. Yes, but I don't know if they used the
22 drugs. You asked if they used the drugs. There was
23 drugs present. I don't know if they used the drugs.

24 Q. I stand corrected.

25 A. Yes, sir.

1 Q. And then Timothy Martinez comes up from
2 behind?

3 A. Yes, sir.

4 Q. And is Javier Molina standing or sitting?

5 A. No, no. He's standing up, sir. He's
6 standing.

7 Q. And Timothy grabs him around the throat?

8 A. Yes.

9 Q. From behind?

10 A. Yes, sir.

11 Q. Puts an arm lock on him and chokes him?

12 A. And choke, yes. Yes, sir.

13 Q. And there comes a point in time when
14 Mr. Molina went to the ground; is that correct?

15 A. Absolutely, yes, sir.

16 Q. And Timothy Martinez did what we call a
17 leg sweep; is that correct?

18 A. Put him down.

19 Q. You know what a leg sweep is?

20 A. Not exactly, but I could figure it out.

21 Q. Took his legs out from under him?

22 A. Yeah, put him down.

23 Q. And when Molina hits the ground, is he on
24 his face, on his side, or on his back?

25 A. I seen Timothy lay him down on his back.

1 Q. Choking?

2 A. He was already passed out. So he put him
3 on the floor. He's no longer choking him. He's
4 laying him down.

5 Q. So he was motionless?

6 A. Yes.

7 Q. And who is the next person to approach
8 Mr. Molina?

9 A. Myself and Jerry Armenta.

10 Q. You and Jerry Armenta?

11 A. Yes, sir.

12 Q. Both of your arms?

13 A. With both arms, yes.

14 Q. Who is the first one to stab Mr. Molina?

15 A. Myself.

16 Q. While you're stabbing him, does anyone
17 else stab him?

18 A. Yes, sir.

19 Q. Both of you working together?

20 A. Yes, sir.

21 Q. I believe you testified yesterday you must
22 have stabbed him 20 times?

23 A. At least half, yes, sir.

24 Q. Are you aware of how many stab wounds he
25 had on him?

1 A. They said over 40, yesterday; correct?

2 Q. I've heard that. Mr. Montoya, where did
3 you stab Mr. Molina? Where on his body?

4 A. Here in the middle of his chest.

5 Q. What about Timothy Martinez? Where did he
6 stab him?

7 A. He just choked him.

8 Q. He just choked him?

9 A. Yes.

10 Q. Someone else stabbed him besides you?

11 A. Yes, sir.

12 Q. And who was that?

13 A. Jerry Armenta.

14 Q. Jerry Armenta. All right.

15 A. Yes, sir.

16 Q. Mr. Montoya, why did you have to stab him
17 so many times?

18 A. I wasn't counting, sir. I was just
19 following instructions that they told me to do.

20 Q. Would it be fair to say you were in a
21 state of rage?

22 A. No, sir.

23 Q. No?

24 A. No.

25 Q. No rage?

1 A. I wasn't in a state of rage. I was -- my
2 mind was blank. I know I had to just do one thing,
3 and the one thing only.

4 Q. Mario Rodriguez. What part did he play in
5 the assault?

6 A. From what I can recall, Mario Rodriguez
7 held Javier Molina's hands down while Timothy was
8 choking him so he wouldn't defend the chokehold. So
9 they were working together as a group. He choked
10 him, laid him down.

11 Q. All right. We're in the cell at this
12 time.

13 A. Yes, sir.

14 Q. Did Mario Rodriguez ever kick Mr. Molina
15 in the head?

16 A. No, sir, he did not.

17 Q. What about downstairs, when Molina
18 escaped?

19 A. Mario Rodriguez?

20 Q. Yes.

21 A. I don't believe so, sir.

22 Q. You never saw Mario Rodriguez either kick
23 or stomp Mr. Molina?

24 A. No, I did not see Mario Rodriguez kick or
25 stomp Javier Molina, sir. No, not Mario.

1 Q. There comes a point in time when
2 Mr. Molina is able to get up and leave the cell?

3 A. Yes, sir.

4 Q. And where did he go?

5 A. He bulldozed his way out the cell. The
6 only place to go is towards the exit door for help.
7 So that's where he was headed.

8 Q. And who followed him?

9 A. Myself and Jerry Armenta followed him.

10 Q. And what did Mario Rodriguez do?

11 A. Mario Rodriguez is yelling at us, myself
12 and Jerry Armenta, to get him, to keep on, keep on
13 the attack, keep stabbing him; like, it wasn't over
14 because he was still up. That's what Mario
15 Rodriguez was doing.

16 Q. And Mr. Molina was able to make it
17 downstairs to the rec room, was he not?

18 A. He made it to the exit door.

19 Q. Sir?

20 A. He made it to the exit door.

21 Q. Okay. And then what?

22 A. Myself and Jerry Armenta continued with
23 the assault. After a few seconds I stopped, and I
24 walked away towards my cell.

25 Q. Mr. Montoya, how well did you know Javier

1 Molina?

2 A. I didn't know him. I didn't know him
3 prior till he moved into that pod with me. I didn't
4 know him at all. He got there and we got acquainted
5 with each other. We were okay with one another. We
6 weren't best friends, but we weren't enemies. I had
7 no problem with Javier at all. I lived there with
8 him for the whole time, maybe a year.

9 Q. Mr. Montoya?

10 A. Yes, sir.

11 Q. I'm going to ask you a series of questions
12 which hopefully can be answered with simple
13 responses.

14 A. Okay. I'm sorry, sir. My apologies.

15 Q. No problem. So how long had you been
16 housed with Javier Molina? A period of a month?

17 A. Maybe over a year, sir.

18 Q. Maybe over a year?

19 A. Yes.

20 Q. And did you get along with him?

21 A. We were cordial with one another.

22 Q. Did he get along with the other inmates?

23 A. Yeah. He was a knucklehead, but he got
24 around with others.

25 Q. There was some friction between he and

1 Jerry Armenta because of Jerry Armenta's daughter?

2 A. Excuse me?

3 Q. I said, there was some friction between
4 Javier Molina and Jerry Armenta because of Jerry
5 Armenta's disabled daughter? Do you recall that?

6 A. No, sir. I remember Jerry Armenta saying
7 something like that. But to my knowledge, sir, that
8 was a fabricated story.

9 Q. Fabricated?

10 A. Story.

11 Q. By whom?

12 A. Armenta.

13 Q. Armenta --

14 A. Yes.

15 Q. -- fabricated that story?

16 A. I think so. I'm not exactly sure, but I
17 don't think anybody said anything to him like that.
18 Not that I remember, sir.

19 Q. Did Javier Molina ever show disrespect to
20 any other inmates?

21 A. He showed disrespect to -- yeah, he did.

22 Q. He was somewhat mouthy at times, was he
23 not?

24 A. He could be, sir, yeah.

25 Q. And it did cause some problems from time

1 to time, did it not?

2 A. For him.

3 Q. Did you ever witness Javier Molina exhibit
4 somewhat erratic behavior? Do you know what I mean
5 by "erratic behavior"?

6 A. Explain it to me, sir.

7 Q. Disruptive.

8 A. I guess he could be disruptive at times
9 when he was on his high horse.

10 Q. Would you say he was well-liked by the
11 other inmates?

12 A. No.

13 Q. No?

14 A. No.

15 Q. Why not?

16 A. Well, he was unpredictable. Like you said
17 a while ago, he was mouthy and disrespectful. So he
18 wasn't everyone's favorite.

19 Q. But you're saying that played no part in
20 the assault on March 7?

21 A. For me, no. They put a hit on him and we
22 acted on that.

23 Q. Mr. Montoya, it was established yesterday
24 on direct examination that in 2001 you were
25 convicted for murder in the second degree.

1 A. Yes, sir.

2 Q. And along with that a conspiracy to commit
3 murder in the first degree; yes?

4 A. Yeah.

5 Q. Aggravated battery and shooting at a
6 dwelling or occupied building?

7 A. They added all that in.

8 Q. Correct me if I'm wrong, but I suspect
9 that it was a drive-by shooting?

10 A. No, it was not, sir.

11 Q. It was not?

12 A. No, sir. It was not.

13 Q. But someone was killed?

14 A. A person got killed, yes, sir.

15 Q. A member of another gang?

16 A. I suspect so.

17 Q. It was gang-related?

18 A. Oh, yeah, it was. Yeah.

19 Q. Gang-related?

20 A. Um-hum.

21 Q. You were the shooter?

22 A. I was one of the shooters.

23 Q. One of the shooters?

24 A. Yes, sir.

25 Q. How many times did you shoot?

1 A. I shot a 12-gauge shotgun. I did not
2 shoot one person. It was the other gun, which
3 someone else had, shot and killed the person. Since
4 I was with that person, we got charged for the same
5 crime. So that's what it was.

6 Q. Was that a crime of rage or politics?

7 A. It was gang-related, so I would say it was
8 spontaneous, you know. We didn't even know them.
9 Gang-related. I was 19 years old at the time.

10 Q. Mr. Montoya, you were asked yesterday
11 about the letter. And to be specific, we're talking
12 about Government's Exhibit 756, the letter that was
13 written to your lawyer by Jerry Armenta.

14 A. Okay.

15 Q. And did you know that he was going to
16 write the letter on your behalf?

17 A. I did not know he was going to write the
18 letter on my behalf.

19 Q. But I believe you said yesterday that
20 Mario Rodriguez played a part in that, in that
21 letter. Do you remember saying that?

22 A. I remember saying Mario wanted Jerry
23 Armenta to take sole responsibility for the crime
24 that was committed. Not pertaining to the letter.

25 Q. And where were the three of you housed at

1 that time?

2 A. We were housed in Santa Fe, I think.

3 Q. Santa Fe?

4 A. PNM North.

5 Q. And the three of you -- did you discuss
6 the possibility of a letter before it was written?

7 A. No.

8 Q. But you know that Blue played a part in
9 it. In other words, he urged Jerry Armenta to do
10 that?

11 A. The letter part? No.

12 Q. Yes.

13 A. Just to take responsibility for the crime.

14 Q. And were you present when they discussed
15 it?

16 A. I was. We were all in the yard. At one
17 point a discussion had come up about Jerry Armenta
18 taking sole responsibility, but I was far away. I
19 was in the yards. I was in the back of the yard.
20 They were in the front of the yard. So I wasn't
21 present when they actually had the conversation.
22 But I had heard later.

23 Q. You had heard later?

24 A. Yes.

25 Q. From whom?

1 A. Mario Rodriguez. It was prison talk, so
2 it was in the yard.

3 Q. There was a lot of gossip going on about
4 the Molina case?

5 A. Pretty much, yes, sir.

6 Q. A lot of people talking about it?

7 A. It was the thing to talk about at the
8 time. Prison, you know -- that's what the SNM was
9 talking about. We were all there together. That
10 was a topic.

11 Q. Was there some degree of planning between
12 the three of you about how you were going to handle
13 the defense?

14 A. I'm pretty sure there was.

15 Q. Well, I'm referring to you. Did you
16 participate in any planning?

17 A. As far as the letter, no.

18 Q. What about Blue, Mario Rodriguez? How
19 much of the planning of the defense did he
20 participate in?

21 A. I don't recall. I just know that Mario
22 wanted him to take responsibility for the murder,
23 and whatever Armenta had come up with, to take
24 responsibility. That would have been the plan or
25 the defense for him. For the rest of us who were

1 charged, we'd just go along those lines.

2 Q. Would it be fair to say that Blue, Mario
3 Rodriguez, was kind of running the show at that time
4 with regard to a defense?

5 A. He wasn't the shot-caller. As far as
6 running the show, I'd have to say no. As far as
7 giving his input on something, yes, but not
8 shot-calling.

9 Q. What about manipulating the facts?

10 A. Probably. Whatever he's saying, they
11 might use. So giving his input, if it sounds good,
12 they're going to use it. And that's it, I guess;
13 right?

14 Q. The facts were manipulated in the
15 investigation of this case with regard to some of
16 you gentlemen. Would you agree with that?

17 A. Yes, yes.

18 Q. You didn't tell the truth?

19 A. At first, we didn't tell the truth. Now
20 we're telling the truth. We have to.

21 Q. We discussed yesterday to some extent the
22 administrative hearing, and that would have been on
23 April 4, 2014?

24 A. I missed that, sir. Could you repeat
25 that?

1 Q. Yes, sure will.

2 On April 4, 2014, at Southern New Mexico
3 Correctional Facility, you appeared before a hearing
4 officer. Do you recall that?

5 A. At the facility? A disciplinary officer,
6 are you talking about?

7 Q. I'm sorry. I misspoke. You were
8 interviewed by STIU shortly after the incident?

9 A. Okay.

10 Q. And what did you tell those officers?

11 A. What date?

12 Q. On or about somewhere between March 8 and
13 March 10.

14 A. Okay.

15 Q. Do you recall that? You were interviewed
16 by STIU?

17 A. I was interviewed, yes.

18 Q. And did you make any type of statement to
19 the officers?

20 A. Yeah.

21 Q. What did you tell them?

22 A. It depends what we're talking about.
23 Whatever they were asking me, I was answering the
24 questions.

25 Q. You denied knowing anything about the

1 incident; correct?

2 A. About the murder?

3 Q. Yes.

4 A. I probably didn't discuss it with them at
5 the time, no. It was too early. So I didn't want
6 to give any type of heads-up to the gang unit to
7 what had happened. So I was trying to keep it
8 secretive at that time. And maybe, if they're
9 asking questions, talk about something else, other
10 than the murder. It was brand-new; it was fresh.

11 Q. I believe at the time you were speaking to
12 two agents with New Mexico State Police, Alvarado
13 and Palomares.

14 A. When is that, sir? The 8th or the 10th?

15 Q. Probably looking at March 8; that's about
16 the time.

17 A. Okay.

18 Q. And you made a couple false statements to
19 those agents, did you not?

20 A. I didn't make a statement to them.

21 Q. Not at all?

22 A. I don't recall. I don't remember making
23 any statement to the State Police or those agents at
24 that time.

25 Q. What about later?

1 A. I might have talked to Agent Palomares on
2 March 25, I think.

3 Q. March 25?

4 A. Yeah.

5 Q. Were you truthful with him?

6 A. The stuff that I might have been saying,
7 yeah, I was. I just didn't give him everything. So
8 yes, I was.

9 Q. You held back information?

10 A. I held back information because I wanted
11 to work with him. I wasn't giving him everything
12 that I had at the time.

13 Q. When did you decide to cooperate with the
14 Government?

15 A. When I found out Dan Sanchez had put a hit
16 on me is when I decided, you know what, this gang
17 act isn't for me, so let me turn a new leaf and go
18 this route and try something different, you know.
19 I've been going against the grain. Let's go with
20 it, see how that works. And that's when I decided
21 to work with the Government.

22 Q. Who convinced you to flip?

23 A. I convinced myself.

24 Q. You didn't confer with Jerry Armenta about
25 it?

1 A. No.

2 Q. And how did you take the first step? Who
3 did you contact?

4 A. I contacted the gang unit at PNM and told
5 them that I wanted to join forces with them and work
6 with them.

7 Q. And did you want to know what was in it
8 for you when you talked to anybody with STIU?

9 A. No. No. I just wanted help.

10 Q. Sir?

11 A. I just wanted help. That's all. I didn't
12 care what was in it for me.

13 Q. But on or about June 6, I believe of
14 2016 -- pardon me, June 26 of 2015, you and Jerry
15 Armenta were both transported to PNM. You were on
16 the same transport, were you not?

17 A. We might have been.

18 Q. And did the two of you discuss how you
19 were going to handle your defenses at that time or
20 later?

21 A. I don't recall, sir. I don't remember
22 those conversations.

23 Q. You don't remember making plans?

24 A. I don't remember those conversations, sir.

25 Q. Mr. Montoya, yesterday you testified as to

1 receiving some benefits from the federal government,
2 acting as a cooperating defendant, and you admit
3 that you abused what privileges they gave you?

4 A. I didn't receive much privileges from
5 them. It's been hard, a tough road. And whatever
6 benefits, I've lost a lot more than I've gained by
7 working with the Government.

8 Q. You've lost more?

9 A. Absolutely.

10 Q. What have you lost, sir?

11 A. I lost friendships, I lost security. You
12 know, I lost my wife, lost my wedding band. My
13 physical properties have gone lost. You know, that
14 adds up. I've been transported here, there, to
15 other facilities where all my things have gone lost.
16 And all my 18 years of family photos, I can't get
17 those back. No, I lost a lot.

18 Q. But you put yourself in this situation.

19 A. Absolutely, I knew it was going to happen.
20 I knew it was going to happen, but it's worth it.

21 Q. How many times have you made false
22 statements in connection with this case?

23 A. I'm not sure.

24 Q. More than once?

25 A. Yes.

1 Q. Perhaps as many as five or six, seven
2 times?

3 A. Pertaining to the things that happened in
4 Lovington; not the murder. I've been accurate about
5 that, truthful when it comes to the murder.

6 Q. We'll talk about Lovington in just a
7 minute. You developed a relationship with a
8 correctional officer?

9 A. Yes. That's my girlfriend.

10 Q. How old is she?

11 A. She's 29 years old.

12 Q. And you manipulated her into bringing
13 drugs and a cellphone into the institution?

14 A. I asked her, yes.

15 Q. That's what prison life is about. It's
16 about manipulation, is it not?

17 A. I've been locked up for 18 years. I've
18 been asking people to do things for me the whole
19 time, my whole life. I was 19 years old, so --

20 Q. Asking? Or have you learned how to
21 manipulate?

22 A. I ask. If they say no, it's no. If they
23 say yes, I'm happy to receive whatever help they're
24 willing.

25 Q. But you got her to bring drugs in to you,

1 "her" being the officer, correctional officer, in
2 Lea County; and then you and another inmate turned
3 around and sold those drugs, did you not?

4 A. We did, yeah.

5 Q. So you learned how to manipulate the
6 system? Yes or no?

7 A. No, I just asked.

8 Q. You just asked?

9 A. That's all I did. I didn't force nobody.
10 I asked. I'm not in a position to intimidate or
11 force anybody to do anything for me.

12 Q. How much have you learned about this case
13 through reading the tablets? You had access to all
14 the discovery, haven't you?

15 A. I have access to discovery, the first
16 part. The second part, my tablet fell, the screen
17 broke, so I haven't had my tablet. So I haven't
18 been able to view new discoveries that have been put
19 on there, sir.

20 Q. You were aware of what kind of story Jerry
21 Armenta was going to tell, weren't you?

22 A. Pertaining to this, no.

23 Q. Pertaining to the Molina case?

24 A. Oh, well, I would say yeah. We're
25 co-defendants, so I know along the --

1 Q. With Timothy Martinez, too?

2 A. I never discussed like that with Timothy
3 Martinez.

4 Q. But you read the discovery concerning
5 Timothy Martinez, didn't you?

6 A. Yeah, but it didn't have a statement or
7 anything that I read by Timothy Martinez.

8 Q. What about Mario Rodriguez?

9 A. No, sir.

10 Q. You haven't read any discovery about Mario
11 Rodriguez?

12 A. No, no.

13 Q. You're the same Jerry Montoya who was
14 convicted on March 17, 2003, in the Third Judicial
15 District Court of Dona Ana County of possession of a
16 controlled substance, a felony narcotic drug; is
17 that correct?

18 A. Yes, sir.

19 Q. And on February 18, 2008, in Santa Fe,
20 First Judicial District Court, criminal
21 solicitation?

22 A. Yes.

23 Q. You know that your criminal history
24 becomes relevant at the time of sentencing, yes?

25 A. Yes, sir. I don't have much of a criminal

1 history.

2 Q. And what is it you expect to gain from the
3 Court and the Government by testifying here today?

4 A. I don't expect to gain anything. I'm just
5 here to tell the truth. And whatever consequences I
6 have coming, that's what I'm facing; that's it.

7 Q. Mr. Montoya, you hope to gain something
8 from it, don't you?

9 A. I don't hope to gain anything. I'm just
10 here doing the right thing and telling the truth,
11 letting everything be known, everyone's roles. And
12 that's it. You know what I mean?

13 Q. And do you expect the jury to believe
14 everything you've told them here today?

15 A. I'm being truthful. Whether they believe
16 me, that's for them to decide, sir. I'm just here
17 letting it be known what I know, what I experienced,
18 and that's it. I don't make their mind up.

19 MR. JEWKES: If I may have a moment with
20 co-counsel, Your Honor?

21 THE COURT: You may.

22 MR. JEWKES: If I may approach counsel for
23 the Government?

24 THE COURT: You may.

25 MR. JEWKES: If we could mark these, Your

1 Honor.

2 Your Honor, we would tender into evidence
3 Defendants' Exhibits FI and FJ, identified as
4 judgments and sentences.

5 MR. BECK: No objection, Your Honor.

6 THE COURT: Any objection from any of the
7 other defendants?

8 Not hearing any objection, Defendants' FJ
9 and FI will be admitted into evidence.

10 (Defendants' Exhibit FJ and FI admitted.)

11 MR. JEWKES: Pass the witness.

12 THE COURT: Thank you, Mr. Jewkes.

13 Ms. Duncan.

14 MS. DUNCAN: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MS. DUNCAN:

17 Q. Good morning.

18 A. Good morning, ma'am.

19 Q. I'd like to follow up on some of the
20 questions that Mr. Jewkes just asked you. First,
21 Mr. Jewkes asked you if Mario Rodriguez had stomped
22 on Javier Molina; correct?

23 A. Yes.

24 Q. And you indicated he had not?

25 A. No, that was not him.

1 Q. It was Timothy Martinez; correct?

2 A. Yes.

3 Q. And Timothy Martinez stomped on Javier
4 Molina's face three times; correct?

5 A. Yes.

6 Q. While Javier Molina was lying on the
7 ground?

8 A. He did, ma'am.

9 Q. Mr. Jewkes also asked you about your 2001
10 conviction for murder, and you indicated that you
11 were 19 years old at the time; correct?

12 A. When the crime happened, I was like 19, 20
13 years old, yes, ma'am.

14 Q. Your victim was 17; correct?

15 A. We were teenagers, yes.

16 Q. But your victim was 17 years old?

17 A. I think so.

18 Q. And you indicated that it was
19 gang-related?

20 A. It was, ma'am.

21 Q. Are you aware that his family disputes
22 that, your victim's?

23 A. I'm not aware of that, no.

24 Q. So you shot into a party; correct?

25 A. Me and someone else, we both shot in the

1 party, yes.

2 Q. So you were convicted, I believe, of four
3 offenses related to that shooting; correct?

4 A. Yes, ma'am.

5 Q. You were convicted of murder in the second
6 degree?

7 A. Yes, ma'am.

8 Q. Conspiracy to commit first-degree murder;
9 correct?

10 A. Correct.

11 Q. And aggravated battery with great bodily
12 harm?

13 A. Yes.

14 Q. And shooting at a dwelling?

15 A. Yes.

16 Q. And at the time you shot -- and your
17 victim's name was Gary Pennington; correct?

18 A. Yes.

19 Q. At the time that you shot Gary, there were
20 other people at that party; correct?

21 A. Yes.

22 Q. You also testified that you were convicted
23 in 2008 for solicitation to bring contraband into
24 prison; correct?

25 A. Yes.

1 Q. You have one additional conviction for
2 possession of drugs; correct?

3 A. In prison?

4 Q. Possession of drugs. In 2003 you were
5 also convicted of possession of a controlled
6 substance?

7 A. I couldn't hear you, ma'am.

8 Q. In 2003, you were convicted of possession
9 of a controlled substance; correct?

10 A. Yes, ma'am.

11 Q. So you have two convictions for possession
12 of a controlled substance?

13 A. Solicitation. I never had control of it.

14 Q. But in 2003, it wasn't solicitation; you
15 were convicted of possession of a controlled
16 substance; correct?

17 A. Yes.

18 Q. I think yesterday when Mr. Beck was
19 questioning you, he asked you about crimes you
20 committed on behalf of the SNM; correct?

21 A. Yes.

22 Q. And one of the crimes that you said you
23 committed on behalf of the SNM was the 2008
24 possession or solicitation to distribute the
25 controlled substance into a prison; correct?

1 A. Yes, ma'am.

2 Q. But before -- you were a drug dealer
3 before you joined the SNM; correct?

4 A. I sold drugs.

5 Q. And you were a drug dealer while you say
6 you were a member of the SNM; correct?

7 A. Yeah.

8 Q. And you continued to sell drugs after you
9 allegedly left the SNM; correct?

10 A. Yes.

11 Q. You also testified yesterday that you, on
12 behalf of the SNM -- let me have a second -- that
13 you assaulted an inmate named Nestor Caraveo;
14 correct?

15 A. Yes.

16 Q. I'm sorry, can you spell Mr. Caraveo's
17 last name?

18 A. I can't spell it.

19 Q. And you said that the SNM hadn't ordered
20 it, but you did it because you knew it was expected
21 of you; correct?

22 A. He was from a rival gang.

23 Q. That's not really why you assaulted Mr.
24 Caraveo, is it?

25 A. That's -- well, it played a part in it.

1 Q. That's right. Because Mr. Caraveo was a
2 co-defendant in your 2000 case for shooting?

3 A. Oh, yeah.

4 Q. And you knew that he had made a statement
5 against you to law enforcement?

6 A. Yes.

7 Q. And in fact, you had previously threatened
8 to kill Mr. Caraveo for making that statement
9 against you?

10 A. No.

11 Q. And you provided paperwork regarding Mr.
12 Caraveo's statement to another inmate --

13 A. Yes.

14 Q. -- with the intention that that inmate
15 would hit Mr. Caraveo?

16 A. With the intent that word would get
17 around.

18 Q. That Mr. Caraveo had testified or provided
19 a statement against you?

20 A. That's what happens in prison.

21 Q. Right. And you provided that paperwork in
22 the hope that someone would injure him for having
23 made a statement against you?

24 A. That's what happens in prison.

25 Q. I'm not asking what happened in prison.

1 I'm asking what you intended.

2 A. I'm sorry, ma'am.

3 Q. You intended for someone to hurt him
4 because he had made a statement against you?

5 A. Yes, ma'am.

6 Q. And do you know, was Mr. Caraveo assaulted
7 based on you passing the paperwork?

8 A. Excuse me.

9 Q. Do you know if Mr. Caraveo was assaulted
10 based on you providing others with that paperwork?

11 A. I don't know if he ever was. No, I don't
12 know.

13 Q. Now, you also testified about the
14 statement Mr. Armenta gave you that potentially
15 exculpated you; correct?

16 A. Yes.

17 Q. That was Government's Exhibit 756?

18 A. The letter?

19 Q. Yes.

20 A. Yes, ma'am.

21 Q. And you've testified that you did not ask
22 Mr. Armenta to write that letter for you; correct?

23 A. Yes.

24 Q. But you did provide it to your attorney?

25 A. Absolutely, ma'am.

1 Q. And you had told your attorney that it was
2 true?

3 A. I did. It was my way out.

4 Q. And provided it to your attorney with the
5 intent that he provide it to the Court; correct?

6 A. Yes.

7 Q. I'd like to show you what we've marked as
8 Defendants' Exhibit FG.

9 MS. DUNCAN: May have a minute, Your
10 Honor?

11 Your Honor, may I approach?

12 THE COURT: You may.

13 BY MS. DUNCAN:

14 Q. I'm showing you what we've marked as FG.
15 Do you recognize this document?

16 A. I'm aware of that, ma'am.

17 Q. And is that a document that you wrote?

18 A. Yes, that's my...

19 MS. DUNCAN: Your Honor, at this time the
20 defense would move the admission of Defendants' FG.

21 THE COURT: Any objection, Mr. Beck?

22 MR. BECK: No objection, Your Honor.

23 THE COURT: Any defendant have any
24 objection?

25 Not hearing any objection, Defendants'

1 Exhibit FG will be admitted into evidence.

2 (Defendants' Exhibit FG admitted.)

3 BY MS. DUNCAN:

4 Q. I'm showing you what's been admitted as
5 Defendants' Exhibit FG, and I think you testified
6 you recognized it?

7 A. I do, ma'am.

8 Q. What is this?

9 A. This is a letter I wrote to my first
10 attorney who was representing me in the murder case.

11 Q. I'd like to direct you to paragraph 4 of
12 this letter. Do you see that here?

13 A. Yes.

14 Q. And can you read to us what that paragraph
15 says?

16 A. "I have a written confession from Jerry
17 Armenta to give to you, the judge, and the DA. I
18 don't want to mail it. I want to hand it directly
19 to you. Mary, Jerry Armenta, Timothy Martinez, and
20 Jason Wright need to be interviewed by you and our
21 investigator as soon as possible so we could start
22 building our defense to defend me."

23 Q. Let me stop you right there.

24 A. Yes.

25 Q. So you're asking -- Mary is your attorney?

1 Mary McMahon was the attorney; is that correct?

2 A. Yes, it was.

3 Q. So you're asking her to interview Jerry
4 Armenta; correct?

5 A. I am, ma'am.

6 Q. Because you're expecting Jerry Armenta to
7 say that you had nothing to do with the Javier
8 Molina murder; correct?

9 A. What he wrote on the letter, that's what I
10 expected him to say, yes.

11 Q. Which is that you had nothing to do with
12 the Javier Molina murder?

13 A. Essentially, yes, ma'am.

14 Q. And now, according to your testimony in
15 court today, that's false?

16 A. Yes, it is false.

17 Q. You also asked your attorney to interview
18 Timothy Martinez; correct?

19 A. Yes, ma'am.

20 Q. And you expected at that time that Timothy
21 Martinez would testify that you had nothing to do
22 with the Javier Molina murder; correct?

23 A. I expected that, yes.

24 Q. And according to your testimony today,
25 that was false?

1 A. That was false.

2 Q. You understand it's a crime to present
3 false testimony in court?

4 A. At the time I didn't know that. I was
5 naive to the judicial system.

6 Q. You understand that now?

7 A. I understand that fully now.

8 Q. I mean, you understand it's wrong to tell
9 a lie; correct?

10 A. Yes, I do know, ma'am.

11 Q. Even before you knew what perjury is, you
12 knew it was wrong to present false evidence to the
13 Court; correct?

14 A. I didn't know it was a crime to do that.

15 Q. That's not what I asked you. I asked you,
16 did you know it was wrong to present false evidence
17 to a Court?

18 A. I understand it's false -- wrong to do
19 that, yes.

20 Q. You also asked your attorney to interview
21 Jason Wright; correct?

22 A. Yes.

23 Q. And you expected Jason Wright to provide
24 testimony that you were not involved in the murder
25 of Javier Molina; correct?

1 A. Yes.

2 Q. Okay. If you could continue reading.

3 A. Okay. "The interviews are critical and
4 need to be done. And this confession letter needs
5 to be in your hands rather than mine. It's
6 something for you to work with. Also, I send you a
7 prison report that belongs to Mario Rodriguez."

8 Q. I want to stop you. Sorry, Mr. Montoya.
9 What are you talking about in that sentence?

10 A. I'm talking about a disciplinary report
11 that we received in prison.

12 Q. It was a report that belonged to Mario
13 Rodriguez?

14 A. Yes.

15 Q. Okay. Could you continue?

16 A. "I need for you to mail it back to me ASAP
17 because he needs it back to give to his lawyer to
18 fight his case. Mario has been asking me for it, so
19 please send it back to me. Make us a copy for our
20 case, just in case. Thank you, Ms. McMahon."

21 Q. We'll stop there. Thank you.

22 So when you sent your attorney that
23 letter, you expected her to rely on it; correct?

24 A. Yes.

25 Q. And to file it with the Court?

1 A. That's what I expected, ma'am.

2 Q. And in fact, she did file it with the
3 Court; correct?

4 A. Yeah, I think so.

5 Q. She filed it when she asked the Court to
6 give Mr. Armenta immunity to testify on your behalf;
7 correct?

8 A. Yes, sir.

9 Q. So he could testify for you without being
10 subjected to prosecution for what he said; correct?

11 A. Yes, ma'am.

12 Q. And she filed that document with the Court
13 like this one; correct?

14 A. Yes, ma'am.

15 Q. And the Court granted that motion to give
16 Mr. Armenta immunity?

17 A. Yes.

18 Q. And the Court granted that motion based on
19 the false statement that you presented through your
20 attorney; correct?

21 A. That's true.

22 Q. And Mr. Armenta's -- according to your
23 testimony now, Mr. Armenta's statement was not the
24 only false statement that you presented to that
25 Court; correct?

1 A. True.

2 Q. You also presented false statements by
3 Timothy Martinez?

4 A. He wrote me a statement, as well.

5 Q. And when did Mr. Timothy Martinez write
6 you that statement?

7 A. Sometime after Jerry Armenta's statement.

8 Q. Do you recall Mr. Martinez writing you a
9 statement in September of 2014?

10 A. I remember him writing a statement for me.

11 Q. And do you recall that Mr. Armenta wrote
12 his statement in January of 2015?

13 A. January, yes.

14 Q. So you would agree with me, would you not,
15 that September 2014 comes before January 2015?

16 A. It might have been dated wrong, but as far
17 as I know, as far as I can remember, ma'am, Timothy
18 wrote me a letter afterwards.

19 Q. If I show you that letter, might it
20 refresh your recollection on the date?

21 A. Yes, ma'am.

22 MS. DUNCAN:: May I approach?

23 THE COURT: You may.

24 MS. DUNCAN: Let's mark this as defense
25 next in order, just for the record. FK, as in Kate.

1 May I approach, Your Honor?

2 THE COURT: You may.

3 BY MS. DUNCAN:

4 Q. Mr. Montoya, can you look at this and tell
5 me if you recognize it?

6 A. Yes, ma'am.

7 Q. Does that refresh your recollection of
8 when Mr. Martinez gave you the statement?

9 A. I remember the letter. I just didn't
10 remember the date, ma'am.

11 Q. And the date that he signed the statement
12 was November 3, 2014; correct?

13 A. Yes, ma'am.

14 Q. And that's before January 2015?

15 A. Yes.

16 Q. And again, did you provide this letter to
17 your attorney?

18 A. I must have.

19 Q. And you forwarded it to your attorney to
20 give to the Court; correct?

21 A. I must have, ma'am.

22 Q. And you know that your attorney did, in
23 fact, forward it to the Court?

24 A. I wasn't aware of that.

25 MS. DUNCAN: If I can approach again with

1 Defendants' FK?

2 THE COURT: You may.

3 A. Did they forward this to the Court?

4 BY MS. DUNCAN:

5 Q. I'm asking you to look at that document.

6 Is that a pleading that was filed in your case in
7 the state court proceeding?

8 A. Yeah, yes.

9 Q. So the statement was filed in court;
10 correct?

11 A. It was filed, ma'am, yes.

12 Q. And your attorney also forwarded a
13 statement from Mr. Martinez in order to obtain
14 immunity for him to testify in your case; correct?

15 A. Yeah.

16 Q. And that was a separate statement;
17 correct?

18 A. Yes.

19 Q. And at the time you told your attorney
20 that that was true?

21 A. Um-hum.

22 Q. And your attorney relied on your
23 representation in filing it with the Court; correct?

24 A. Yes, ma'am.

25 Q. And based on that representation, the

1 Court gave Mr. Martinez immunity; correct?

2 A. Yes, just to testify.

3 Q. But that was based on your representation
4 that the information provided in Mr. Martinez'
5 statement was true?

6 A. Yes, it was.

7 Q. Finally, you also submitted to the Court
8 through your attorney a statement by Mario
9 Rodriguez; correct?

10 A. I'm not sure. Could you put it up so I
11 could see it? I'm not sure about Mario.

12 MS. DUNCAN: Your Honor, if I could mark
13 this Defendants' Exhibit FL.

14 If I can approach, Your Honor?

15 THE COURT: You may.

16 BY MS. DUNCAN:

17 Q. I'm showing you what's been marked as
18 Defendants' Exhibit FL.

19 A. Yes, ma'am. Yeah, they didn't grant that.
20 I remember writing it. They didn't let that in.

21 Q. You provided this statement from Mario
22 Rodriguez to your lawyer?

23 A. Yes, ma'am.

24 Q. And you represented to your lawyer that it
25 was true?

1 A. I did.

2 Q. And based on your testimony today, you're
3 saying it wasn't true; correct?

4 A. That statement is not true on Mario.

5 Q. Mr. Rodriguez was saying you had nothing
6 to do with the statement of Javier Molina?

7 A. Yeah.

8 Q. And based on your representation to your
9 attorney, your attorney submitted it to the Court?

10 A. Yeah.

11 Q. Filed in the court. And in this case the
12 Court did not grant Mr. Rodriguez --

13 A. They did not grant his letter in, no.

14 Q. It's not that they didn't admit the
15 letter; it's that they didn't grant him immunity to
16 testify at your trial; correct?

17 A. I remember the judge saying that he didn't
18 want to let that letter in. They just let Timothy
19 Martinez's in, along with Armenta's, and not that
20 one. For whatever reason, I'm not sure. But that's
21 what I had heard.

22 Q. Let me show you --

23 MS. DUNCAN: May I just have a moment,
24 Your Honor?

25 THE COURT: Certainly.

1 MS. DUNCAN: I'm just marking for
2 identification purposes Defendants' Exhibit FM. May
3 I approach, Your Honor?

4 THE COURT: You may.

5 BY MS. DUNCAN:

6 Q. I'm showing what you I've marked as
7 Defendants' Exhibit FM. Do you recognize this, Mr.
8 Montoya?

9 A. There's been so many documents. I guess.

10 Q. Take the time to read it.

11 A. Okay, yes.

12 Q. And so the Court granted Jerry Armenta
13 immunity to testify at your trial; correct?

14 A. They did.

15 Q. Based on your attorney's application;
16 correct?

17 A. Yes, the letter that I had written.

18 Q. But denied immunity to Mario Rodriguez;
19 correct?

20 A. Yes. I don't know why.

21 Q. And if I tell you that the letter Mr.
22 Rodriguez submitted on your behalf is still a part
23 of the court record, would you have a reason to
24 think that I was not telling the truth?

25 A. It's there, so I figure it's true.

1 Q. And how did you get that statement from
2 Mr. Rodriguez?

3 A. He gave it to me.

4 Q. Where were you when he gave it to you?

5 A. Maybe at the North, ma'am, PNM.

6 Q. Did you discuss the statement with Mr.
7 Rodriguez before he gave it to you?

8 A. I don't recall.

9 Q. Did you discuss Mr. Martinez' statement
10 before he gave it to you?

11 A. I don't recall that either.

12 Q. Now, these statements, these written
13 statements that they provided for you, is not the
14 first time you asked them to lie for you; correct?

15 A. I'm not sure.

16 Q. You had a disciplinary hearing in April of
17 2014; correct?

18 A. Yes, after the crime we all faced a
19 disciplinary.

20 Q. And you asked the hearing officer to call
21 Jerry Armenta as a witness for you; correct?

22 A. Yes, ma'am.

23 Q. And you asked the hearing officer to ask
24 Mr. Armenta two questions: One, did you see Inmate
25 Montoya assault Inmate Molina? And two, did you see

1 Inmate Montoya with a shank; correct?

2 A. Yes.

3 Q. And when you asked the hearing officer to
4 ask Mr. Armenta those two questions, you expected
5 that he would answer both no.

6 A. Yes.

7 Q. And based on your testimony in front of
8 the jury, that was a lie?

9 A. Yeah, I didn't want to get caught for it,
10 so...

11 Q. So you asked Mr. Armenta to lie for you?

12 A. Yes.

13 Q. Is that a yes?

14 A. Yes.

15 Q. You also asked the hearing officer to call
16 Timothy Martinez as a witness; correct?

17 A. Yes, ma'am.

18 Q. And for the hearing officer to ask
19 Mr. Martinez the same two questions?

20 A. Yes, ma'am.

21 Q. And you expected him to give the same two
22 answers, "No"?

23 A. I expected them, yes.

24 Q. And in fact, Mr. Armenta answered both
25 questions "No," to the hearing officer; correct?

1 A. Yes.

2 Q. And Mr. Martinez answered "No" to the
3 question: Did you see Inmate Montoya assault Inmate
4 Molina; correct?

5 A. Yes, ma'am.

6 Q. And he answered, "Don't know" to if he saw
7 you with a shank; correct?

8 A. That's what it says, at that time.

9 Q. So you've testified a little bit about
10 your prior criminal conduct, and I would like to
11 talk to you some more about the misconduct at the
12 Lea County Correctional Facility.

13 A. Okay.

14 Q. Mr. Beck asked you about that conduct
15 during your direct testimony; correct?

16 A. He did, ma'am.

17 Q. And you told him that you did not notify
18 the Government of that misconduct until the jig was
19 up?

20 A. True.

21 Q. You had been caught for that misconduct by
22 that time?

23 A. I had not been caught.

24 Q. You were aware that they had evidence that
25 you had a cellphone; correct?

1 A. Yes.

2 Q. And when you told Mr. Beck that you did
3 not, the cellphone wasn't yours, that was about a
4 week before this trial started; correct?

5 A. Yes.

6 Q. On January 22 of 2018?

7 A. Yes, ma'am.

8 Q. And you told him that the cellphone
9 belonged to your cell mate, Richard Gallegos?

10 A. It was both of ours.

11 Q. You didn't tell him that.

12 A. I'm sorry.

13 Q. You told him that it was Richard
14 Gallegos'; correct?

15 A. Yes. I said that, yes.

16 Q. And you told Mr. Beck that Mr. Gallegos
17 got the cellphone from a homie named Pate; correct?

18 A. Yes.

19 Q. And that was not true?

20 A. That was not true.

21 Q. Actually, the cellphone was brought in by
22 your girlfriend, Amelia Alvarado; correct?

23 A. Yes.

24 Q. And Ms. Alvarado also brought in Suboxone
25 on your behalf, correct, into the correction

1 facility?

2 A. Yes, ma'am, she did.

3 Q. A cellphone is considered contraband
4 inside a prison; correct?

5 A. I would think so, ma'am.

6 Q. So it's a crime to bring a cellphone into
7 a prison; correct?

8 A. Yes, ma'am.

9 Q. And it's also a crime to bring Suboxone
10 into a prison?

11 A. Yes.

12 Q. You also testified you had sex with
13 Ms. Alvarado on three occasions; correct?

14 A. Yes.

15 Q. And at the time she was a correctional
16 officer?

17 A. She was.

18 Q. And you're aware it's a crime for a
19 correctional officer to have sexual intercourse with
20 an inmate; correct?

21 A. I was aware.

22 Q. And you conspired with Ms. Alvarado to
23 commit these crimes; correct?

24 A. We talked about it, and that's conspiring,
25 yes.

1 Q. You agreed with Ms. Alvarado for her to
2 bring Suboxone into a prison; correct?

3 A. Yes, ma'am.

4 Q. And you agreed for her to bring a
5 cellphone into a prison?

6 A. I asked her and she brought it.

7 Q. At the time that you asked her and she
8 brought it, you were aware she has three young
9 children?

10 A. Yes, ma'am.

11 Q. And you asked a woman with three young
12 children to commit criminal offenses with you;
13 correct?

14 A. Yes, ma'am.

15 Q. How old are Ms. Alvarado's children?

16 A. 13, 9 and 2.

17 Q. And you're aware that Ms. Alvarado may
18 face criminal consequences?

19 A. Oh, absolutely. We both are facing
20 criminal charges. We're not -- we're not escaped
21 from this at all. We're going to face the music.
22 So I already know. That's a given.

23 Q. You know Ms. Alvarado denied that you were
24 involved in any of these crimes; correct?

25 A. Yes.

1 Q. Right. Ms. Fox-Young asked you if
2 Ms. Alvarado was pregnant based on your sexual
3 encounters with her; correct?

4 A. Yes, ma'am.

5 Q. And you said no?

6 A. I believe she's not.

7 Q. And you denied that you previously said
8 she was pregnant; correct?

9 A. I denied that -- I denied what?

10 Q. That you had previously said she was
11 pregnant.

12 A. I didn't say that to anybody. I don't
13 remember saying that to nobody. I'm sorry, I don't
14 remember.

15 Q. Do you recall writing letters to
16 Ms. Alvarado while you were in detention?

17 A. Yes, ma'am.

18 Q. And in those letters, you talked to
19 Ms. Alvarado about being pregnant; correct?

20 A. I wanted her to have my baby. I remember
21 saying that, I wrote that. I didn't know if she was
22 pregnant or not.

23 MS. DUNCAN: I'd like to mark this exhibit
24 as defense next in order, which is Defendants' FN.

25 Q. Mr. Montoya, I'm going to show you what's

1 been marked as Defendants' Exhibit FN.

2 MS. DUNCAN: May I approach, Your Honor?

3 THE COURT: You may.

4 A. What do you want me to do?

5 BY MS. DUNCAN:

6 Q. I want you to review it and tell me if you
7 recognize it.

8 A. Yes.

9 Q. Is that a letter that you wrote to Ms.
10 Alvarado?

11 A. Yes.

12 Q. And other than the highlighting that you
13 see on this exhibit, does this look like a true and
14 correct copy of that letter?

15 A. Yes.

16 MS. DUNCAN: Your Honor, I'd move the
17 admission of Defendants' Exhibit FN?

18 THE COURT: Any objection, Mr. Beck?

19 MR. BECK: Yes, Your Honor. I object as
20 hearsay.

21 THE COURT: Let me see the letter up here.

22 (The following proceedings were held at
23 the bench.)

24 MR. JEWKES: What is the exhibit?

25 THE COURT: Well, you're just offering it

1 for impeachment purposes; right?

2 MS. DUNCAN: I am, Your Honor, but I would
3 like to publish it to the jury. If I can publish
4 it, I don't need to have it in evidence.

5 THE COURT: Any problem with showing the
6 statements to the jury that you wrote here for
7 impeachment purposes?

8 MR. BECK: Yeah, I think she can read them
9 to them. Don't show it to the jury.

10 THE COURT: Just read that to them.
11 Traditional impeachment on this.

12 MS. DUNCAN: Okay.

13 (The following proceedings were held in
14 open court.)

15 THE COURT: Ms. Duncan.

16 BY MS. DUNCAN:

17 Q. Mr. Montoya, this letter is dated January
18 2, 2018; correct?

19 A. It's dated that, yes, ma'am.

20 Q. And this is a letter that you wrote to Ms.
21 Alvarado; correct?

22 A. It's a letter I wrote, yes.

23 Q. And she's the correctional officer with
24 whom you had sex while in custody?

25 A. Yes.

1 Q. And you wrote to Ms. Alvarado, "Look at us
2 now, we're pregnant"; correct?

3 A. Yes.

4 Q. And you say, "Can't put into words or
5 describe how lucky and fortunate I feel. Head over
6 heels in love with you. You are my forever. Now to
7 find out that you're going to have my child just
8 made us official eternal"; correct? You wrote that
9 to her?

10 A. Yes, I did.

11 Q. You wrote, "Babe, I just want to get out
12 and complete you, be a good husband to you, father
13 figure and daddy to our little bundle of joy";
14 correct?

15 A. That's what I want.

16 Q. And you wrote that?

17 A. Excuse me?

18 Q. You wrote that; correct --

19 A. Yes, ma'am, I did.

20 Q. -- to Ms. Alvarado? And you wrote, "I
21 can't wait to take pictures, kiss your panza, and
22 for you to start showing." You wrote that?

23 A. I wrote that.

24 Q. And panza means stomach?

25 A. Yes.

1 Q. And so you're aware that Ms. Alvarado has
2 also made statements that she's pregnant?

3 A. I'm aware of that, but I don't think she's
4 pregnant no more.

5 Q. So you have previously said she was
6 pregnant; correct?

7 A. From that letter, I wrote that, yes.

8 MS. DUNCAN: May I have a moment, Your
9 Honor?

10 THE COURT: Certainly.

11 BY MS. DUNCAN:

12 Q. Mr. Jewkes asked you about some prior
13 statements that you made to law enforcement. I'd
14 like to go through those with you.

15 A. Okay.

16 Q. The first statement you made was March 8
17 of 2014 to Agent Palomares; correct?

18 A. I don't recall giving them a statement,
19 ma'am.

20 Q. Do you recall talking to them?

21 A. I remember them -- saying I don't want to
22 talk to them, and I opted out to talk to Holguin.

23 Q. Do you recall Agent Alvarado asking you:
24 "Where were you when all this commotion -- when you
25 noticed all this going on, where were you at?"

1 And you answering, "In the day room"?

2 A. I don't remember the conversation, ma'am;
3 I'm sorry.

4 Q. If I showed you a transcript of that
5 conversation, might it refresh your memory?

6 A. We could try.

7 MS. DUNCAN: Your Honor, may I approach?

8 THE COURT: You may.

9 A. Ma'am, are you asking me to look over the
10 highlighted parts?

11 BY MS. DUNCAN:

12 Q. Just on that page.

13 A. Okay. I'm done.

14 Q. To see if it refreshes your recollection.

15 A. I'm done.

16 Q. Does that refresh your recollection of
17 what you told Agent Palomares?

18 A. It's there, ma'am.

19 Q. And after making that statement, you then
20 declined to answer any further questions; correct?

21 A. Yes, ma'am.

22 Q. And you told Agent Palomares that you were
23 still trying to figure out what happened your damn
24 self; right?

25 A. Yes, ma'am.

1 Q. And the agents confronted you with the
2 fact that they had a video of the incident; correct?

3 A. Yes, ma'am.

4 Q. And that they saw you on that video?

5 A. I guess so.

6 Q. I can show you. Can I show you --

7 A. No, no, no. I see myself on the video,
8 ma'am, yes.

9 Q. And they told you they had seen you on the
10 video?

11 A. Yes, ma'am.

12 Q. So after that interview is when you talked
13 to Agent Holguin; correct?

14 A. Yes.

15 Q. And you told Agent Holguin that you didn't
16 know anything; correct?

17 A. Yes.

18 Q. And Agent Holguin had another officer
19 describe what you were wearing and doing on the
20 video of the Molina murder; correct?

21 A. I don't remember verbatim what had
22 happened.

23 Q. Do you remember them telling you that they
24 saw you on the video?

25 A. Holguin?

1 Q. Yes, Holguin and Maldonado.

2 A. My memory is real vague about that
3 interview, ma'am. There was a lot of moving parts
4 at that time. I just --

5 Q. If I were to show you a report of that
6 interview, might it refresh your recollection?

7 A. You don't have to show me, ma'am.

8 Q. I'm only going to show you if you think it
9 might help you remember the conversation that you
10 had with the agents?

11 A. Like I said, my memory is vague about that
12 time. It's been a long time since that happened,
13 ma'am.

14 Q. Do you remember admitting to Agent Holguin
15 that it might have been you on the video?

16 A. Possibly, ma'am, yes.

17 Q. Then I think you had a follow-up interview
18 with Agent Holguin on March 10th, 2014; correct?

19 A. Yes.

20 Q. And then you said you had an interview.
21 Let me ask you a few more questions about that.

22 A. Okay.

23 Q. You told Agent -- or yeah, you told
24 Officer Holguin that you wanted him to be present
25 during the interview with the State Police; correct?

1 A. That was on March 8, I think, ma'am.

2 MS. DUNCAN: Your Honor, may I approach?

3 THE COURT: You may.

4 BY MS. DUNCAN:

5 Q. It's Bates No. 12960.

6 MS. DUNCAN: May approach, Your Honor?

7 Q. I'm showing you the report of Officer
8 Holguin. Would you look at this bottom paragraph?

9 A. Okay. Yes.

10 Q. That was on March 10th, 2014?

11 A. Yes, ma'am.

12 Q. And you told Officer Holguin that you
13 would only talk to him about what you wanted;
14 correct?

15 A. I think so.

16 Q. What you wanted at the time was a deal;
17 correct?

18 A. I didn't talk to him about a deal at that
19 time.

20 Q. I'm asking what you wanted at that time.
21 At that time you wanted to make a deal; correct?

22 A. No.

23 Q. In March of 2014, you did not want to make
24 a deal with the State?

25 A. I don't remember talking to him about a

1 deal, ma'am.

2 Q. I'm not asking what you talked about. I'm
3 asking you if, in March of 2014, you were interested
4 in making a deal with the State.

5 A. Yes.

6 Q. Then you were interviewed later in March
7 by Agent Palomares; correct?

8 A. I think on the 25th, ma'am?

9 Q. 25th of March 2014.

10 A. Yes, ma'am.

11 Q. And during that interview, you asked Agent
12 Palomares if he had talked to the district attorney;
13 correct?

14 A. Yes, ma'am.

15 Q. And you wanted to know if he had talked to
16 the district attorney because you wanted to get a
17 deal?

18 A. Yes.

19 Q. You told the agents that you felt you had
20 a lot to offer; correct?

21 A. At that time I thought that, yes.

22 Q. And you told Agent Palomares that you just
23 wanted to try it out and see if, you know, if it
24 works, you know, telling the truth, if it goes
25 anywhere; correct?

1 A. Yes, I've been going against the grain
2 this whole time. It was not working for me.

3 Q. And if it goes anywhere, you were hoping
4 to get a deal; correct?

5 A. At that time, yes.

6 Q. If you told them you were going to lie to
7 them, they weren't going to give you a deal;
8 correct?

9 A. If I lied to them, no, they would not give
10 me a deal.

11 Q. If you told them you were going to lie,
12 they wouldn't give you the deal; correct?

13 A. If I told them I was going to lie, they
14 wouldn't give me a deal.

15 Q. You had to tell them you would tell the
16 truth?

17 A. Absolutely.

18 Q. So when you testified that you decided
19 in -- after you -- well, you testified when you're
20 speaking to Mr. Jewkes, that you decided to
21 cooperate after you'd been charged in the federal
22 case; correct?

23 A. Yes.

24 Q. You actually decided to cooperate back in
25 March of 2014?

1 A. I didn't cooperate. I would have did it
2 then. They came and offered me a deal twice, which
3 I declined, my loyalties. I was conflicted. My
4 loyalties were still with the SNM. I declined the
5 offer that I was seeking --

6 Q. You told agents in March of 2014 that you
7 wanted to cooperate; correct?

8 A. I told them that. When they came with
9 it --

10 Q. You've answered my question.

11 A. Oh, I'm sorry, ma'am. Yes.

12 Q. Thank you. Do you recall talking to Mario
13 Rodriguez about his prior conviction for criminal
14 sexual penetration?

15 A. I don't remember talking about it. But he
16 would clown and make fun of his charge lightly, that
17 he had that charge.

18 Q. Mr. Rodriguez told you that the victim of
19 that rape was a sex offender; correct?

20 A. I had heard, yes, ma'am.

21 Q. Mr. Rodriguez told you that; correct?

22 A. I don't remember him specifically telling
23 me that. I had heard through prison gossip that
24 that person that he did that to was a sex offender,
25 a rapist, whatever, somewhere along those lines.

1 THE COURT: Ms. Duncan, would this be a
2 good time for us to take our morning break?

3 MS. DUNCAN: It would, Your Honor.

4 THE COURT: Let's be in recess for about
5 15 minutes. All rise.

6 (The jury left the courtroom.)

7 THE COURT: All right. We'll be in recess
8 for about 15 minutes.

9 (The Court stood in recess.)

10 THE COURT: All right. We'll go on the
11 record. Anybody need to discuss anything from the
12 Government?

13 MR. CASTELLANO: No, sir.

14 THE COURT: How about from the defense
15 side? Anybody got anything?

16 MS. FOX-YOUNG: No, Your Honor, for Mr.
17 Perez.

18 THE COURT: All right.

19 (The jury entered the courtroom.)

20 THE COURT: All right. My clerk ran the
21 prescription to Walgreen's, but they couldn't fill
22 it immediately. He's going to run back at 10:30.
23 It should be here soon. I appreciate the patience
24 of everybody hanging in there and working hard.

25 All right, Mr. Montoya, I'll remind you

1 you're still under oath.

2 THE WITNESS: Yes, sir.

3 THE COURT: Ms. Duncan, if you wish to
4 continue your cross-examination of Mr. Montoya, you
5 may do so at this time.

6 MS. DUNCAN: Thank you, Your Honor.

7 BY MS. DUNCAN:

8 Q. So before the break, we were talking about
9 Mario Rodriguez' claim that the man he raped with a
10 hot sauce bottle was a sex offender. Do you
11 remember that?

12 A. I do, ma'am.

13 Q. And you said that it was sort of around
14 the prison that that was true, but you couldn't
15 remember if it was Mario Rodriguez who said it. Is
16 that fair?

17 A. That's fair.

18 Q. Do you remember meeting with the
19 Government, so the people at this table, in January
20 of 2017?

21 A. Yes, ma'am.

22 Q. That was your first debrief with them when
23 you agreed to cooperate?

24 A. It was.

25 Q. And do you remember discussing

1 Mr. Rodriguez' crime with the agents?

2 A. It had come up. There was not too much
3 detail, but it had come up.

4 Q. And you told the Government that Mario
5 Rodriguez had explained that he had shoved a hot
6 sauce bottle up a sex offender's ass; correct?

7 A. He didn't explain like that to me. It was
8 just prison gossip. But that's what was explained
9 to me, yes, ma'am.

10 Q. So if Agent Acee wrote that you had said
11 that Mario Rodriguez explained that, he'd be wrong?

12 A. Probably not. I don't know. I don't
13 think so, ma'am.

14 Q. Would it help if I show you the report?

15 A. No, ma'am.

16 Q. Would it surprise you to learn that the
17 man Mario Rodriguez raped was in prison for a DWI?

18 A. I have no clue what he was in prison for.
19 I don't know the person.

20 Q. I asked you: Would it surprise you to
21 learn that the man Mario Rodriguez raped was in
22 prison for a DWI?

23 A. Yeah.

24 Q. And would it change your opinion of Mario
25 Rodriguez to learn that that man was in prison for a

1 DWI?

2 A. No.

3 Q. Now, I would like to go back to the
4 interview that you had with Mr. Holguin on March
5 10th, 2014. Do you recall telling Mr. Holguin that
6 "if you look at the camera," he would see Dan
7 Sanchez and Mario Rodriguez sitting at a table
8 reviewing paperwork?

9 A. Sitting on the stoop, not the table.

10 Q. Okay. But that if they reviewed the
11 video, they would see the two of them reviewing
12 paperwork; correct?

13 A. I don't remember telling Holguin that.

14 MS. DUNCAN: If I can approach, Your
15 Honor? Bates No. 12961 to 12962.

16 Q. If you could look at the bottom of this
17 document -- first, let me show you the first page.
18 You looked at this earlier; correct?

19 A. We did.

20 Q. And this is the report by Mr. Holguin
21 about his interview with you on March 8 and March
22 10th, 2014?

23 A. Yes.

24 Q. I gave you the wrong page. So I'm showing
25 you page Bates stamped 12961, and ask you to look at

1 the bottom, so about the third line from the bottom,
2 and then on to the next page.

3 A. Yes, ma'am, I do remember that now.

4 Q. So you told -- on March 10th, 2014, you
5 told Mr. Holguin that they should pull the cameras
6 because it would show Mr. Sanchez and Mr. Rodriguez
7 sitting at a table looking at the paperwork;
8 correct?

9 A. They were.

10 Q. I asked: On March 10th, 2014, that's what
11 you told Mr. Holguin; correct?

12 A. Yes.

13 MS. DUNCAN: Your Honor, I have no further
14 questions.

15 THE COURT: Thank you, Ms. Duncan.

16 Ms. Bhalla?

17 MS. BHALLA: Not at this time.

18 THE COURT: Not at this time? All right.
19 Thank you, Ms. Bhalla.

20 All right, Mr. Beck, do you have redirect
21 of Mr. Montoya?

22 MR. BECK: Yes, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. BECK:

25 Q. Good morning, Mr. Montoya.

1 A. Good morning, sir.

2 Q. Yesterday Ms. Fox-Young asked you some
3 questions about Rudy Perez' statement to you in
4 Estancia. Do you remember that?

5 A. Yes, sir.

6 Q. And I think she asked you about when in
7 time that you told me that. Do you remember that?

8 A. Yes.

9 Q. At the time you were charged in this
10 federal case in December 2015, was Rudy Perez
11 indicted at that time?

12 A. No.

13 Q. Was he indicted in the state case
14 beforehand?

15 A. He was not.

16 Q. And the first time -- was the first time
17 you told me about your discussion with Rudy Perez at
18 Estancia when we met preparing for this trial on
19 January 22?

20 A. It was. But I had thought I had brought
21 it up before. I guess I hadn't, but I had disclosed
22 it on the 22nd, sir.

23 Q. And did you disclose it to me when I asked
24 you about each of these four defendants and whether
25 any of them had told you anything related to the

1 crime?

2 MS. FOX-YOUNG: Objection, leading.

3 A. Yes.

4 THE COURT: Overruled.

5 BY MR. BECK:

6 Q. Sorry, what was your answer to that?

7 A. My answer to that is yes.

8 Q. I think Mr. Jewkes asked you this morning
9 about your tablet. When did your tablet break?

10 A. It broke when I was in Lovington, New
11 Mexico, at the detention there. It had fell and the
12 screen had broke.

13 Q. Has it been repaired since then?

14 A. I haven't received it, sir.

15 Q. So have you had the ability to look at
16 your tablet since that time when it broke in
17 Lovington?

18 A. I have not.

19 Q. Ms. Duncan asked you a lot about your
20 state case with the Javier Molina murder. Do you
21 remember that?

22 A. Yes, sir.

23 Q. Who were the other defendants charged in
24 that state case?

25 A. Timothy Martinez, myself, Jerry Armenta.

1 Mario Rodriguez.

2 Q. And so that's Timothy Martinez, Mario
3 Rodriguez, Jerry Armenta and you; is that four
4 people?

5 A. Yes.

6 Q. And I think earlier this morning
7 Mr. Jewkes asked you about which four people were in
8 the room with Javier Molina when he was murdered.
9 Is it those same four people?

10 A. It is.

11 Q. And I don't have all of the exhibits in
12 front of me that she asked you about, but do you
13 recall her showing you a statement of Timothy
14 Martinez that was filed in your state case?

15 A. I do, sir.

16 Q. And that's -- and I think you said -- was
17 that statement true?

18 A. From Timothy Martinez?

19 Q. Right.

20 A. No.

21 Q. Has that statement been filed in this
22 federal case?

23 A. No, it has not.

24 Q. Then, she went over --

25 MR. BECK: Your Honor, the United States

1 moves to admit Defendants' Exhibit FL, FM, and FK.

2 MS. DUNCAN: I have no objection, Your
3 Honor.

4 THE COURT: Does anybody else have any
5 objection?

6 MS. BHALLA: I don't think I do. I just
7 wanted to take a look.

8 THE COURT: Certainly.

9 MS. BHALLA: No objection.

10 THE COURT: Defendants' Exhibits FL, FK,
11 and FM will be admitted into evidence.

12 (Defendants' Exhibits FL, FK, and FM
13 admitted.)

14 MR. BECK: May I publish to the jury, Your
15 Honor?

16 THE COURT: You may.

17 BY MR. BECK:

18 Q. Mr. Montoya, I'm showing you what's now
19 been admitted as Defendants' Exhibit FL. At the top
20 it says "State of New Mexico, County of Dona Ana,
21 Third Judicial District, State of New Mexico versus
22 Jerry Montoya." Is that the State Javier Molina
23 case?

24 A. It is, yes, sir.

25 Q. And it says that this is amended

1 defendant's application motion for defense witness
2 immunity. Is that you as the defendant, your motion
3 for witness immunity?

4 A. Yes, sir.

5 Q. And here on the back page of that, is this
6 the statement from Mario Rodriguez that you and I
7 just -- or that you went over with Ms. Duncan just
8 now?

9 A. Yeah, it is.

10 Q. And in this statement, is he telling the
11 truth, or is he lying about your involvement in the
12 Molina murder?

13 THE COURT: Let's not have Mr. Montoya
14 decide whether he's lying. That will be for the
15 jury to decide. He can say whether it's true or
16 not.

17 Q. Is what he says in here about your
18 involvement true in the Molina murder?

19 A. No, sir.

20 Q. And Exhibit FM here, this is an order
21 granting application for use of immunity. Is this
22 again in your state case for the Javier Molina
23 murder?

24 A. Yes, sir.

25 Q. And does that grant Jerry Armenta immunity

1 but not Mario Rodriguez?

2 A. That's what it reads, sir.

3 Q. And last, this is Exhibit FK. And is this
4 again in your state Javier Molina murder case?

5 A. Yes, sir.

6 Q. And attached to the back of this, is this
7 Timothy Martinez's statement that you and I were
8 just talking about?

9 A. It is, sir.

10 Q. Is what Mr. Martinez says in this
11 statement true?

12 A. No.

13 Q. And I'm showing you again Exhibit FM,
14 which was filed June 9 of 2015; FL, which was filed
15 May 12 of 2015; and FK, which was filed January 12,
16 2015. Are those the dates those were filed?

17 A. I see that, yes, sir.

18 Q. Were you still a member of the SNM at that
19 time?

20 A. I was.

21 Q. Were you cooperating with the federal
22 government in this case at that time?

23 A. No.

24 Q. I think yesterday when we talked about --
25 let me show you -- I'm showing you what's been

1 admitted as Defendants' Exhibit FG. Excuse me. Is
2 that the letter you sent to your attorney after you
3 received Jerry Armenta's statement?

4 A. Yes, sir.

5 Q. You and I talked about this yesterday. Do
6 you remember that?

7 A. Yes.

8 Q. I think when I asked you why you sent that
9 letter to your attorney, you said, "Because it was
10 my way out. That was my ticket to freedom. That
11 was my way out of jail." Do you remember that?

12 A. I do, sir.

13 Q. Did you file those statements from Mr.
14 Martinez, Mr. Rodriguez, and Mr. Armenta in state
15 court because you wanted to get out of jail for the
16 Javier Molina murder?

17 A. I did, yeah.

18 Q. Did you file them because you didn't want
19 to serve a life sentence in prison?

20 A. Absolutely.

21 Q. Is that what you meant by "they were your
22 ticket to freedom"?

23 A. Yes, sir.

24 Q. I'm showing you what's been admitted as
25 Government's Exhibit 681. Do you recognize what

1 that is?

2 A. That's my plea agreement with the
3 Government.

4 Q. And in your plea agreement with the
5 Government, what sentence are you facing right now
6 after you pled guilty?

7 A. Life in prison.

8 Q. The next page, please, and paragraph 6.

9 Mr. Montoya, I'm showing you paragraph 6
10 in Government's Exhibit 681. We went over this
11 yesterday. What does this paragraph mean to you?

12 A. That potentially I may have a downward
13 departure.

14 Q. Does that mean that you may potentially
15 serve less than a life sentence?

16 A. It does.

17 Q. Will you go to the page before and show us
18 paragraph 2, please?

19 Now, Mr. Montoya, I'm showing you
20 paragraph 2 of Government's Exhibit 681. What are
21 you required to do to possibly get out of a life
22 sentence in this case?

23 A. Tell the truth.

24 Q. And in that second sentence, what does
25 that second sentence say that you have to do to

1 possibly get out of a life sentence in this case?

2 A. That if I give false testimony, it's not
3 going to help me or minimize my role.

4 Q. Does it also say that if you exaggerate
5 the involvement of any person in the crime, you
6 violate this plea agreement?

7 A. Yes, sir.

8 Q. Over the last two days have you told us
9 the truth about your involvement in this case?

10 A. Absolutely.

11 Q. Have you told us the truth about others'
12 involvement in this case?

13 A. Yes, sir.

14 Q. And did you sign that plea agreement
15 before you told us about Mr. Sanchez telling you to
16 be trucha and get it done before you went and killed
17 Javier Molina?

18 A. Yeah.

19 Q. Did you sign that plea agreement before
20 you told us that Mr. Perez talked to you about
21 providing his shanks in Estancia?

22 A. Yeah.

23 MR. BECK: May I have a moment, Your
24 Honor?

25 THE COURT: You may.

1 MS. JACKS: We'd ask for that last answer
2 to be limited, please.

3 THE COURT: All right. It will be limited
4 to Mr. Perez's consideration of the charges against
5 him, and not be considered as to any other defendant
6 in the case.

7 MR. BECK: Pass the witness, Your Honor.

8 THE COURT: Thank you, Mr. Beck. Anything
9 further, Ms. Fox-Young?

10 MS. FOX-YOUNG: Briefly, Your Honor.

11 THE COURT: Ms. Fox-Young.

12 RECROSS-EXAMINATION

13 BY MS. FOX-YOUNG:

14 Q. Mr. Montoya?

15 A. Yes, ma'am.

16 Q. It's your testimony that you killed Javier
17 Molina on March 7, 2014; right?

18 A. It is.

19 Q. And that you were caught on video doing
20 it; right?

21 A. Yeah.

22 Q. And that ever since then, beginning with
23 statements that you made the next day, you've been
24 looking for a ticket to freedom; right?

25 A. I had a year to go home at that time. So

1 yes.

2 Q. Yes or no, Mr. Montoya, you were looking
3 for a ticket to freedom?

4 A. Yes.

5 Q. And in the course of the last almost four
6 years, you've told the authorities a number of
7 different stories in an attempt to find your
8 freedom, haven't you? You just told Mr. Beck that
9 all those statements that you made and submitted to
10 the Court in order to get immunity for other
11 individuals -- those weren't true; right?

12 A. At first they were not. Once I decided to
13 cooperate with the Government, I had to tell the
14 truth.

15 Q. Those statements weren't true; right?

16 A. In the beginning, the state case, they
17 were not true, no.

18 Q. And the statements that you made to the
19 Government about the cellphone and your girlfriend,
20 Ms. Alvarado -- those weren't true; right?

21 A. I was just trying to protect her.

22 Q. And you're aware --

23 MS. JACKS: Objection, nonresponsive.

24 THE COURT: Overruled.

25

1 BY MS. FOX-YOUNG:

2 Q. You're aware that Mr. Perez was charged in
3 April 2016?

4 A. Yeah, for his involvement.

5 Q. And you were housed with Mr. Perez for a
6 period of time until you left Torrance County
7 Detention Center in October of 2016; isn't that
8 right?

9 A. That's when he told me his involvement.

10 Q. Please answer the question, Mr. Montoya.

11 A. I'm sorry. Yes, ma'am.

12 Q. And it was then 15 months from the time
13 that you left the Torrance County Detention Center
14 until the day -- just the day before this trial
15 started that you told Mr. Beck, upon his prodding,
16 that Mr. Perez made that statement to you; isn't
17 that right?

18 A. Yes, ma'am.

19 MS. FOX-YOUNG: Thank you, Your Honor. No
20 further questions.

21 THE COURT: Thank you, Ms. Fox-Young.

22 Anything further? Ms. Duncan?

23 MS. DUNCAN: Thank you, Your Honor.

24

25

1 States by giving truthful and complete information
2 and/or testimony concerning the defendant's
3 participation in and knowledge of criminal
4 activities; correct?

5 A. Yes, ma'am.

6 Q. You violated that agreement; correct?

7 A. I did.

8 Q. You gave Mr. Beck false information about
9 your own criminal activity?

10 A. I did, yes.

11 Q. And you gave him false information about
12 Ms. Alvarado's criminal activity.

13 A. I didn't mention it, ma'am.

14 Q. You gave him -- you just didn't mention
15 Ms. Alvarado; correct?

16 A. Yes.

17 Q. But you gave false information about your
18 own involvement?

19 A. I did.

20 Q. So you violated this by telling him that
21 it wasn't your cellphone; correct?

22 A. Yes, ma'am.

23 Q. It had been brought in by someone else?

24 A. Yeah.

25 Q. And that you weren't involved in the

1 distribution of drugs while a Government witness?

2 A. That's what I said.

3 Q. So you understand from this paragraph that
4 because you were untruthful with Mr. Beck, the
5 United States has the right to rescind the plea
6 agreement and reinstitute criminal proceedings
7 against the defendant; correct?

8 A. Absolutely.

9 Q. "The defendant" being you?

10 A. Yes.

11 Q. If we could go page 2, paragraph 6.

12 Now, you're in violation of your plea
13 agreement and it's now up to the people at this
14 table to decide whether to file a motion for a
15 downward departure for you; correct?

16 A. It's up to them, whatever they feel like.

17 Q. So they're within their rights, based on
18 your violation of the plea agreement, to give you
19 nothing; correct?

20 A. It is, yes.

21 Q. So you have to earn back the Government's
22 good graces; correct?

23 A. If I'm in good graces with them, yeah.

24 Q. That's the only way you're going to get
25 your motion for a downward departure; right?

1 A. The way I earn my downward departure is by
2 telling the truth, which I've been.

3 Q. That wasn't my question. My question was:
4 They're the only ones who can file a motion;
5 correct?

6 A. Yeah, they filed the motion.

7 Q. So they decide whether you're being
8 truthful, and whether your testimony is worth filing
9 a motion for a downward departure; correct?

10 A. Yeah, it's up to them.

11 Q. Mr. Beck asked you about those pleadings
12 filed on your behalf in the state trial. Your state
13 trial was scheduled to commence on December 4, 2015;
14 correct?

15 A. Yes, ma'am.

16 Q. And the State filed a nolle prossed
17 dismissal because the federal government was taking
18 it up; correct?

19 A. Yes.

20 Q. And that state court is a court just like
21 this one; correct?

22 A. What?

23 Q. The state court is a court just like this
24 one?

25 A. Yes.

1 Q. And had you gone to trial, you would have
2 been tried in front of a jury just like this one?

3 A. Yes.

4 MS. DUNCAN: I have no further questions,
5 Your Honor.

6 THE COURT: Thank you, Ms. Duncan.

7 Mr. Jewkes, do you have anything?

8 MR. JEWKES: No, Your Honor.

9 THE COURT: Mr. Beck, do you have anything
10 further?

11 MR. BECK: No, Your Honor. The witness
12 may step down.

13 THE COURT: All right. Mr. Montoya, you
14 may step down.

15 Is there any reason Mr. Montoya cannot be
16 excused from the proceedings, Mr. Beck?

17 MR. BECK: Not from the Government, Your
18 Honor.

19 MS. FOX-YOUNG: Your Honor, we'd like to
20 reserve this witness.

21 THE COURT: All right. You're going to be
22 subject to re-call, so you'll be able to leave and
23 leave the building. But you can't come back into
24 the courtroom. Since you're subject to re-call,
25 you're not free to discuss your testimony with

1 anyone.

2 Thank you, Mr. Montoya. I appreciate your
3 testimony.

4
5 UNITED STATES OF AMERICA

6 STATE OF NEW MEXICO

7

8 C-E-R-T-I-F-I-C-A-T-E

9 I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
10 Official Court Reporter for the State of New Mexico,
11 do hereby certify that the foregoing pages
12 constitute a true transcript of proceedings had
13 before the said Court, held in the District of New
14 Mexico, in the matter therein stated.

15 In testimony whereof, I have hereunto set my
16 hand on this 17th day of March, 2018.

17

18

19 _____
Jennifer Bean, FAPR, RMR-RDR-CCR
20 Certified Realtime Reporter
United States Court Reporter
21 NM Certified Court Reporter #94
333 Lomas, Northwest
Albuquerque, New Mexico 87102
22 Phone: (505) 348-2283
Fax: (505) 843-9492
23 License expires: 12/31/18

24

25

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 843-9492

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com